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Charles Evans Jr. Hughes

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PROBATION PROGRESS¹

CHARLES EVANS HUGHES, JR.²

Dean Pound likes to tell of a speaker who in commencing his address said: "I ask you to look carefully at my subject as printed on the program of this meeting. I do not expect to have occasion to refer to it again." I have no intention of departing entirely from my subject, but it does need some interpretation. A survey of "probation progress" in the year 1932 cannot content itself with merely a catalogue of achievements—with merely "pointing with pride" when the economic conditions in which we live necessitate some "viewing with alarm."

Along with a proper degree of self-congratulation for gains consolidated, must go an appraisal of the elements constituting the basis upon which lasting probation progress must rest, and also sober consideration of the obstacles which existing conditions erect in the path of progress. I propose to arrange my discussion under these three divisions.

First, on the subject of actual past accomplishment, there is cause for gratification—whether one takes a long view and surveys the entire quarter century of the existence of the National Probation Association, or confines his subject matter to the year immediately past.

Twenty-five years ago, when this Association was organized, there were only about 200 probation officers in the United States. Today there are nearly 4,000. Twenty-five years ago only half of the states had juvenile probation and only about one-fourth any form of adult probation. Today all but two of the states have juvenile court laws and the federal government and two-thirds of the states have laws of some sort providing for adult probation. It is true that the provisions for juvenile courts in many of the states are inadequate, both in geographical extent and in the scope of the jurisdiction provided, and that in some states adult probation exists largely in name only, without sufficient financial appropriation or intelligent supervision to make possible its effective administration. But when all that is said, the gain—measured by conditions as they are today in comparison with those twenty-five years ago—is impressive. Gradu-

¹Address at National Probation Conference, Philadelphia, May 13, 1932.

²President National Probation Association.

ally, year by year, the inadequacies are being overcome. Obsolete laws are being amended, or superseded, by new legislation into which has been written the experience of the passing years. Standards of administration are little by little being raised. The creation of adequate, trained staffs, with reasonable salary range, is taking place, at least in many of our larger cities. Improved personnel and more scientific case-work methods are coming. The federal government and an increasing number of state governments are being called upon to bear a part in the development and supervision of probation work.

All this has been illustrated in the past year of 1931. After the year 1930, in which comparatively few legislatures convened, 1931 was a year of considerable activity. Proposals for the adoption or extension of probation laws were up in some 35 states. Some of the resulting new legislation was not of great importance, and we had some set-backs, but the net result of the whole decidedly was progress.

New adult or general probation laws were adopted in Alabama and Colorado. Neither of these statutes is ideal. Neither is sufficiently flexible in its definition of the kind of persons who may be put on probation, and, what is worse, neither makes adequate provision for salaried probation officers. But it is progress to have a start made in those states.

Alabama also passed a series of amendments to her juvenile court law, which made clear that proceedings in that tribunal are regarded as non-criminal in character. Maryland, which previously had special juvenile courts in only three counties, enacted a law providing unpaid juvenile court committees, appointed by the Governor in each county, to nominate for appointment by the Governor special juvenile court magistrates in each county, as soon as the county commissioners make necessary appropriations. A model adult probation law, based largely on recommendations of the Association, was enacted for Baltimore, and an increased appropriation was made. Michigan amended its adult probation law broadly and included a provision that before any person is sentenced for a felony, a probation officer shall make a social investigation of the case. Ohio passed an important Act providing for the first time exclusive original jurisdiction over all offenders under eighteen years of age in the juvenile courts. Oregon and Wisconsin greatly broadened the scope of their adult probation laws and, with respect to both minors and adults, struck out the previous limitation of the use of probation in felony cases to persons not previously convicted of a felony. Utah thoroughly revised its juvenile court law, following in the main recom-

mendations of the Association, and providing among other things that judges as well as probation officers of juvenile courts be appointed on the basis of merit after competitive tests of fitness. And in other states legislative progress was made in the direction of stricter requirements of fitness for probation officers.

A less important start was made in South Dakota and Tennessee, where laws providing for suspension of sentence were adopted. These laws are far too limited in their application, but they are an entering wedge. For the rest, the legislation, some of which was of considerable importance, embraced a variety of amendments of existing adult probation laws, generally in the direction of extension of their scope, revision of statutes regulating the court treatment of juveniles, provision for increased probation service or better compensation for probation officers, one law creating a State Probation Commission and others giving additional supervisory powers to existing agencies.

There were, as I have said, disappointments. There was some actual legislation which was not progressive. But the chief disappointments were in states where proposals, scientifically prepared and carefully drawn, in one case recommended by a State Commission created to study the problem, failed of adoption. But even these setbacks may in the long run mean progress. Interest has been created, responsible agencies in the state are studying the problem, and it is not too much to hope that in the not too distant future their work will bear fruit.

On the imponderable, but no less real, side of progress, consisting of education of the public, the year has been a notable one. There has never been a year in which the Association has more fully performed its function of serving as a clearing-house for information on all phases of probation work. Requests for information, surveys and other work, with a view to extension of probation facilities, come from all parts of the country. This betokens more wide-spread interest in probation, and promotes that public understanding of the subject which is the best guarantee of either sound legislation or intelligent administration.

This thought leads directly to the second division of my subject matter, that is, the continuing necessity of keeping clearly in mind the essential requisites for lasting progress. These concern not so much the theory of probation as its practical administration.

If probation is to be generally and permanently accepted by intelligent public opinion, as a method of dealing with offenders against the laws which society has erected for its protection, it must not be

administered in a spirit of mere leniency to the criminal. Mere sentimentality should never be permitted to govern its application. It must be presented and applied as a method of discipline, and its protagonists would be foolish not to recognize that the employment of this more humane method can be justified only where circumstances make it reasonably probable that it will as effectively protect the public as would a harsher punishment.

In the Report of the Commission on Law Observance and Enforcement—the report on Penal Institutions, Probation and Parole—there were two, among its several conclusions and recommendations, which taken together seem to me to epitomize at once the ideal of probation and the necessary approach to its attainment. The Commission says that “no man should be sent to a penal institution until it is definitely determined that he is not a fit subject for probation.” But it also says, and this is just as important, that “the success of probation is dependent upon the care with which cases are originally chosen and upon the sufficiency of later supervision.”

The latter conclusion sounds short and simple on a first reading, but in its implications it comprehends all the essentials of sound probation service.

It means judges who understand and sympathize with the fundamental theory of probation. It means probation officers qualified by education and by special training and experience, to weigh intelligently each moral risk, and endowed with qualities of character and personality which fit them to be helpful counselors and guides to the probationer along the hard road to rehabilitation. It means that these probation officers, fine as they may be in character, adaptability and special training, must not be so overwhelmed with a volume of cases that they have not the time or strength to give adequate attention to each. It means preferably a state supervisory body to direct the work and to make available to each probation officer the increasing experience derived by the entire service. And all this means an educated public so fully informed of the meaning of probation and so convinced of the importance of its place in the field of penology that their representatives in the legislatures will not only enact sound and scientific laws providing probation machinery, but will grant appropriations adequate to insure their proper application.

These ideals are not easy of attainment. The proper selection of fit cases for probation cannot be solved by the promulgation of any rigid formula. Certain general principles are fairly obvious. Professional criminals and hardened characters to whom offenses

against society have become a habit, are not fit subjects. They are usually incapable of reformation. Persons guilty of atrocious crimes are, in the absence of very exceptional circumstances, too dangerous to be allowed at large. Drug addicts, persistent alcoholics and feeble-minded persons have usually not the qualities of character which make them amenable to the guidance upon which probation depends for its success. Prisoners who have too extended contacts with the underworld are usually not safe risks because, unless the sentencing authority has reason to be convinced that the prisoner is prepared to make a clean break with all his former associations, the best uplifting work of the probation officer will be counteracted and nullified by continued anti-social contacts.

But setting on one side all these classes as usually to be excluded, and on the other side the obviously fit subjects, in whose case the commission of a crime has been more or less accidental or the result of over-bearing temptation, or for some other reason not indicative of the man's true character, there exists between these two classes a very wide "no-man's land" of border-line cases in which no rigid tests can safely be stated. It is a sound general proposition that youthful offenders or first offenders are usually safer probationary risks than are second offenders. But a rigid rule that all first offenders are fit subjects and all second offenders are not, would not be justified by actual experience. A youthful or first offender is *prima facie* a good probationary risk because, as a matter of first impression, it would appear that he is likely to be less sophisticated and his character not so fixed that it could not be molded by helpful treatment. But if investigation reveals that he is in fact not at all a novice in crime, that his offense has been by no means casual, that in fact he has been for years a member of a gang engaged in all sorts of anti-social acts, and perhaps has perpetrated many crimes of which he has been either lucky enough or skilful enough to avoid detection, he may be not nearly as good a moral risk as some older man, normally law-abiding but who through particular temptations may have committed rather clumsily more than one crime and in each case has been detected. In the first case the criminal, though technically a first offender, may be so deeply rooted in evil associations that a life of crime is for him inevitable and cannot be arrested by the best probation treatment. In the latter, criminal conduct may be, in spite of lapses, actually out of character.

To determine whether cases such as these, and many others probably more difficult which the experience of any probation officer

reveals, are fit subjects for probation, requires most thorough investigation and a wealth of knowledge of human nature with sound judgment to apply it. In all these border-line cases, which are not either obviously fit or obviously unfit, the actual decision must rest upon an appraisal of the subject's moral character. The basis for such a judgment can be disclosed only by painstaking study, by skilfully conducted questioning of the man himself, by checking his story with information received from others, to discover all that can be known of the man's reputation, his past record, the character of his associations, his home life, religious contacts and any other influences which may make for or against his reformation.

In this investigation the probation officer should play a leading part. The judge may find out some of these things for himself, but he usually has not the time to check and re-check all of the information that should be brought to bear upon the case.

The function of supervision, after the criminal has been placed on probation, is of course the place where the character and qualifications of the probation officer are of extreme importance. His should be a profession, comparable to the profession of teaching. The whole value of the probation method is lost if the probation officer regards his work simply as a job to be gotten through with a minimum of time and effort, if his investigation is desultory and his receiving of reports from the probationer and rendering reports to the court are merely perfunctory. In many cases it would be better for a youthful or first offender to be sent to a prison or reformatory, especially if it were of the minimum security or prison farm type, where there was a wise and sympathetic warden or superintendent, capable of understanding and molding the character of the delinquent through friendly contact and counsel, than it would to put him on probation in charge of an officer whose supervision was perfunctory and whose character and personality failed to inspire confidence or provide guidance.

Probation supervision, rightly understood, is one of the highest forms of social service work. It involves making use of all the social, educational, recreational, moral and religious resources of the probationer's neighborhood to aid in his rehabilitation. The state must see to it that those selected for this delicate duty of reconstructing human character are fitted by character, background and special training to be equal to their high calling. Politics should be rigidly excluded from their selection. Experience indicates that the best results are obtained through the use of a competitive examination, which puts the greatest emphasis upon experience, training, person-

ality and character. But whatever the method of appointment, there should be one standard and one only—fitness.

Third, and lastly, we must consider the effect of the present economic depression upon probation work and how to overcome its retarding effect upon probation progress.

The obstacles which it creates are obvious. The general outcry of over-burdened taxpayers against unnecessary expenditure of public funds is first directed against projects which are thought of as paternalistic or merely experimental. It is a time when those private educational and character-building agencies, which do not seem to have direct relation to the relief of actual distress, are suffering curtailment of contributions and facing possible contraction of their activities. Many businesses, as well as educational and charitable organizations, hope for nothing better than to stay where they are. If probation service is to "progress" in any larger sense than merely holding on to what has been accomplished and resisting curtailment of its functions through governmental retrenchment, it can only be because it offers to society a service especially vital, and because society is convinced that money spent upon it will bring a certainty of return.

The first and obvious consideration is that present conditions of wide-spread unemployment greatly increase the need for probation service. One probation department reports that this problem has "colored almost every activity in the department." Not only does unemployment tend to increase greatly the number of offenders for whom probation is the appropriate treatment, but it immeasurably complicates the treatment itself. It requires no statistics to tell us that the widespread acute distress occasioned by unemployment vastly increases the number of offenders who are not normally of the criminal type. Thefts are a conspicuous example of crime to which the depression brings almost unprecedented temptations. The father of a family who finally resorts to stealing to provide food for his over-burdened wife and under-nourished children, the young boy whose family can no longer keep him and who can find no work for himself, the young girl who faces a choice between stealing, starvation or going on the streets, are becoming all too common types in the criminal courts. It needs no super-sentimentality to differentiate such cases from the ordinary thefts of normal times, or such persons from the usual type of criminal. They are pre-eminently of the sort for which probation treatment is most appropriate, and as long as the depression continues, with the savings of families and individuals

constantly becoming exhausted, they may appear in greater and greater numbers.

Add to such obvious temptations presented by unemployment the more intangible results of enforced idleness among large numbers of young people, with the concomitant tendency to spend their time in ways and places which in normal circumstances they would have been too busy to seek. Danger of young people being led quite casually and almost unconsciously into a state of social delinquency is increased through numberless subtle influences at times when normal occupations are not available.

Just as conditions of unemployment increase the number of offenders who should, in accordance with generally accepted principles, be placed upon probation, so they immeasurably increase the difficulties of the probation officer in accomplishing the purpose of rehabilitation. The job was delicate and difficult enough when all surrounding conditions were favorable, when there could be cooperation with the home, and when private character-building agencies had resources fairly commensurate with their needs. The situation is enormously complicated when the home is in difficulties of its own and when charitable and character-building organizations are suffering curtailment of financial support in the face of unprecedented demands. One of the first duties of the probation officer in normal conditions was to see that the probationer stayed on his job or, if he had none, to find one for him. Today this is often an impossibility. Supervising an unemployed probationer is vastly more difficult than supervising one whose time, for at least most of his waking hours, is accounted for by normal productive effort. Plainly, the task of guiding an offender back to normal life in times like these calls for a far greater degree of energy, ingenuity and resourcefulness than under normal conditions. Plainly, also, it requires the expenditure of far more time per case. This means that the case load per probation officer should be decreased rather than increased and that appropriations for probation service should be enlarged rather than reduced, if the job is to be properly done.

The second consideration is that, in the matter of public expense, probation has a good case. The increased number of offenders must be taken care of somehow. Even counting increased appropriations to make possible a probation service adequate to the necessity, it can be done far more economically through that method than through incarceration. In New York it costs about \$550 a year to keep one man in prison as against about \$30 to keep him under probation su-

pervision, and this comparison excludes the vast investment represented by prisons of the high-security or fortress type. The figures in other states vary, but it is safe to say that ten to fifteen persons can be given probation treatment for the cost of keeping one in a penal institution.

Economics are, of course, not the only consideration. Society is willing to pay for its protection and would never support extension of probation service merely to save government costs, if that involved impairment of its protection against the criminal. But if the circumstances justify a belief that an offender can be reformed and restored to a normal place in society by probation treatment, the expense of sending him to a penal institution is a waste of public funds.

Probation progress in times of depression like this, therefore, depends upon education of the public to understand that probation, discriminately applied and intelligently administered, is an effective method for the control of crime. In all the insistence upon decreasing the cost of government, which has been intensified by the depression, we hear no agitation for cutting down on outlays for jails, prisons and reformatories, on the number of prison guards or on the police force. They are regarded as essential institutions for protecting society against crime. If there is fear of curtailment of probation activities, it must be because probation has not yet been as generally accepted as entitled to a place in the same category. Once its proper function is sufficiently widely understood, there will be as little talk of retrenchment in this service as there is in the case of the more traditional forms of penal discipline.

The public must be made to understand that, in the vast majority of cases, the protection of society ultimately depends upon success in the reformation of the criminal. Except in cases of certain atrocious crimes for which the penalty is death or life imprisonment, we must face the fact that even if imprisonment is imposed, the prisoner will sooner or later be released and again take his place as a member of society. The Report of the Commission on Law Observance and Enforcement, to which I have previously referred, contains statistics on this subject which expose the fallacy of thinking of imprisonment as keeping a criminal out of contact with society. It shows, briefly summarized, that taking the prison and reformatory population of the United States as a whole, about 97 per cent of the inmates are subject to release. The great majority of them are released within about two years. The choice between probation and imprisonment is therefore not a choice between leaving a criminal at large and

keeping him locked up. Most offenders who are sentenced to prison cannot be kept locked up. Their offenses are not of the nature to merit such extreme punishment and the public expense would be prohibitive.

The most important question, therefore, is what kind of man the offender will be when he comes out of prison, after serving his term, as compared with the kind of man he will be if he is not sent to prison at all, but spends a period of time, usually longer than the prison sentence would have amounted to, under the supervision of a probation officer. The contaminating effects of prison associations are well known. There is a limit to the extent to which it is practicable, even under an enlightened prison administration, to segregate hardened criminals and keep them out of contact with youthful or first offenders. It does not help protect society to put a young boy or a casual offender in prison, there to be subjected to influences that make a professional criminal out of him. The comparative effect of the two methods upon the state of mind of the offender is also important. If a man is sent to prison his whole life is uprooted, his job lost, his family relations broken. He knows that resumption of legitimate work and a normal place in his world will be immeasurably more difficult with the definite and too often lasting stigma of prison association attached to him. All this conspires to destroy that hope upon which rehabilitation usually depends. Moreover, an offender who has been put in prison and has served his sentence is likely to feel that his account with society has been squared. He has broken her laws and he has paid the penalty which she exacts. He owes her nothing. Probation, on the other hand, puts the offender under a continuing obligation to be industrious and law-abiding if he is to be allowed to remain at large. At the same time it gives him the friendly counsel and supervision of an officer of the court to guide his steps. It thus creates at once a powerful incentive to rehabilitation and definite aids to its accomplishment.

There is general agreement, I think, that in the majority of cases prison life under present conditions does not reform the criminal. To the extent that it does not it fails to protect society—as far as concerns prisoners who are going to be released within a comparatively short period of time. If the probation method is better able, in the case of a large proportion of offenders, to realize that ultimate goal of reformation, it is to that extent a better means of protecting society against the recurrence of crime than is incarceration.

It is for those engaged in the probation service so to perform their duties as to deserve public confidence. It is for those of us who are not in the service, but who believe in the probation theory, to devote ourselves to the task of educating the public to understand that, given the tools of sound statutory machinery, adequate appropriations and strict standards of fitness for appointment of officers, probation is capable of performing a function in the protection of society against crime which places it in the category of essential public service, retrenchment in which would not be justified even in the most severe economic depression.