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THE PROGRESS OF PROBATION AND SOCIAL TREATMENT IN THE COURTS

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The nineteenth century has been characterized as the century of invention and great material progress. At the twentieth century's dawn the prophets of optimism foretold not alone unabated development in science, invention and material advancement, but also a growing emphasis on the spiritual—on art, literature and improved human relationships, making this century the golden age of man.

The country and the whole world has gone through a process of disillusionment, through the great war and its aftermath, enhanced by the years of industrial depression which continue today. In spite of the disillusioning process, or perhaps in part because of it, we are able to survey more than one field of human relationship and record progress. In some cases it is progress in overthrowing outworn traditions; again, it is in the establishment of new institutions better fitted to serve mankind.

At no time in the world's history has there been such widespread interest and, I think, so great progress toward the solution of the age-old problem of the just and preventive treatment of crime, as has occurred in this country since the beginning of the century. This is shown by a great increase in public discussion of the subject, the flood of new legislation. and the development of new agencies, public and private, for dealing with the delinquent. Among these new or improved agencies, are the crime commissions, the reorganized bureaus of criminal statistics, the psychiatric clinics, scientific prison reform, and, almost all within this century, the rapid development of systems of probation and parole. This interest and activity, legislative and administrative, have been greatly accelerated in the period since the World War.

The movements for prison reform and reformed criminal procedure which developed in the nineteenth century have taken on new life within the last few years. To a large extent the old humane or sentimental interest in offenders seems to have been replaced with a common-sense, scientific attitude, which sees that understanding and individual treatment, with a view toward reformation wherever pos-

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sible, is the best possible way to protect society. The nineteenth century interest in improving upon corrupting jails and prisons led to the establishment of training schools for children and reformatories for adults. This in turn led to the discovery that there were many young and first offenders who could safely be given a chance to make good in society without punishment, other than a fine or restitution in some cases, and so various plans for mitigating or suspending sentence developed. Then the discovery was made, first of all in the courts of Boston, that through the work of certain societies and individuals who volunteered their services, the addition of friendly, personal supervision and guidance to the suspension of sentence not only greatly helped in the reformative or making-good process, but also provided real discipline and a better protection of society. And so the probation plan was born.

What Is Probation?

"Probation," says the report of the National Commission on Law Observance and Enforcement, "must be considered as the most important step we have taken in the individualization of treatment of the offender."[2] Properly developed, probation always provides the courts with two important services. First, through the investigating function of the probation officer it gives the judges information regarding each defendant's past, his character, and social background, all of which is necessary for a just sentence—just to him, to his dependents and to society. Second, for those adjudged suitable, or in other words, safe risks for release without the drastic method of imprisonment, or a mere fine, it provides a system of personal supervision, discipline and guidance under the probation officer of the court, who should be trained and competent for this difficult social task.

The History of Probation

The early history and development of the probation movement and the gradual socializing of court processes that has come about through it are of great interest. At first it was used sparingly in exceptional cases and by exceptional courts; then laws began to be enacted providing for the use of probation as an official form of treatment, until today in many courts it has become the major form of treatment, especially in courts dealing with children and family relations.

[2]Report on Penal Institutions, Probation and Parole, No. 9, 1931, p. 173.

The extension of probation work has been an important phase in the general movement for humanizing or socializing the law and processes for dealing with the dependent and unfortunate charges of society. A growing appreciation of the need for individualizing treatment, the application of the principles of social investigation and treatment, and more recently the coming in of applied psychology and psychiatry to the understanding of personality and behavior gave impetus to the efforts of humanitarians to mitigate the injustice of laws which seek to punish alike all those committing similar offenses.

The first application of the probation principle was made on behalf of the young. About the middle of the nineteenth century various prisoners' aid societies, children's aid societies, and societies for the prevention of cruelty to children were established, and their work began to have effect upon the courts. A number of these societies had paid agents who worked in the criminal courts, chiefly to protect and salvage children, there being no special courts for children in those days. This work, at first unofficial, was similar in methods and results to probation, though it did not reach all types of children and was concerned mainly with investigating and placing them in homes or special institutions. Later the agents of these societies were given a status in law by which they made investigations for the court and acted as guardians of children and young offenders.

In dealing with adult offenders, which at that time meant all over sixteen, a similar modification of treatment was going forward, based on an extension of judicial discretion. Under the common law of England there grew up various legal devices for avoiding the rigid and severe punishment for crime which then characterized and still characterizes our penal laws. Chief among these was the suspension of sentence or the postponing of judgment on the part of the court, the offender being released on good behavior. The power of the court to suspend sentence indefinitely has been held as an inherent right of the courts in many of our states.

A similar practice which developed in Massachusetts became known as "bailing on probation." The case is adjourned before sentence is imposed and the defendant is released on bail. The probation officer becomes surety, charged with bringing the probationer back to court at the end of the stated period. This becomes the term of probation supervision and may be extended. At the end of the adjournment the court may discharge the defendant or otherwise dispose of him.

This method of dealing with offenders was used in the courts of Boston for many years before the enactment of the first probation law in 1878. It is recorded that John Augustus, a shoemaker, was the first to carry on this work extensively, serving as a volunteer probation officer. His work, and that of others who followed him, seemed to have embraced the essential features of probation, namely, investigation of defendants before release, regular reports and visits to the homes.

The first Massachusetts probation law in 1878 provided for an official, paid probation officer appointed by the mayor and responsible to the chief of police. The powers granted to this officer were extensive. He was required "to attend the sessions of the courts of criminal jurisdiction held within the County of Suffolk, investigate the cases of persons charged with or convicted of crimes and misdemeanors, and to recommend to such courts the placing on probation of such persons as may reasonably be expected to be reformed without punishment."[3]

Through successive developments in Massachusetts the probation system was made statewide. In 1891 the appointment of probation officers was transferred to the courts and made mandatory in all district, municipal and police courts. In 1898 the superior court was given power to appoint its own probation officers.

It was twenty years after the first Massachusetts law before any other state adopted similar legislation. It is true that experiments with supervised release were being made in several states under suspension of sentence or bench parole laws, but it was not until 1898 that Vermont followed Massachusetts and enacted a statewide law, requiring the appointment of a probation officer by the county judge in each county.

It is an interesting fact that these earliest probation laws gave complete discretion to the courts in granting probation and provided for the mandatory appointment of probation officers. Many state laws since enacted have limited the courts as to the character or number of offenses for which the defendant may be placed on probation. This is an unfortunate departure from the early principle that not the offense but the character and reformability of the offender should determine his treatment. An even more serious limitation to effective probation service has been the prevalent leaving to local judges and fiscal authorities as to whether or not there should be probation officers to administer the law.

[3]Chapter 198 Massachusetts Laws of 1878.

The next two states to enact probation laws in 1899 were Rhode Island and Minnesota. Like the earlier Massachusetts and Vermont laws, the act applied to both adults and children, and it introduced a new principle. This was complete state control. The probation officers were then and have since been appointed by the State Welfare Board. However, this was exceptional. In most states probation work has developed as a function of the court, but with an increasing movement, following Rhode Island's lead, toward state supervision and control of appointments.

The Minnesota law was at first really a juvenile probation law, being limited to children under eighteen. In the same year, 1899, Illinois enacted the first juvenile court law in the world, with probation provided as the cornerstone for the treatment of the delinquent child. However, at first only unpaid probation officers were authorized. In the same last year of the century Colorado enacted a law with many of the provisions of a juvenile court law, and under it Judge Ben Lindsey began to develop his famous juvenile court, using school truant officers as probation officers.

At the beginning of the present century we therefore had but three states with general probation laws and three other states with the power to use probation limited to children. The work of the pioneer juvenile courts in Chicago and Denver attained wide popularity and laws establishing juvenile courts with probation provisions were enacted very rapidly. By 1910 thirty-six had adopted such laws. Today all but two states have them, although in many the laws are limited or inadequate.

Adult probation, while it officially began first, has developed more slowly. Following the enactment of probation laws in the three New England states, adult probation laws were passed in 1900 in New Jersey, 1901 in New York, 1903 in California, Connecticut and Michigan, and in 1905 in Maine. Today thirty-two states have some provision for adult probation, but there is even more variation in the provisions of these laws than in juvenile court legislation. In twenty-six states there are laws which make a statewide system possible, but in the writer's opinion only thirteen have as yet developed such a system. Sixteen states, most of them in the south, have no adult probation whatever.

The Present Development

It may well be wondered why, with the early success of probation and its demonstrated economy, complete probation systems have

not been developed in all states. The reasons for the slow development of adult probation are the same as those which lie back of the numerous limitations which have appeared in the later laws, especially in regard to the offenses for which persons might be placed on probation. The answer is to be found in the conservatism of legal minds and of the public. Probation has had to contend with the older ideas of punishment and deterrence. Individual treatment has been looked at askance. There has been fear of giving too much discretion to judges in applying a system which mistakenly was thought to be one of leniency. However, there has been no consistency in dealing with the matter by the various states. The Massachusetts law placed no restrictions upon the judges in regard to the number or degree of offenses. The terms and conditions of probation were left entirely to the discretion of the court. Vermont and New Jersey followed the Massachusetts law; so did Virginia later and more recently Utah. In 1931 Oregon enacted a law permitting the use of probation without limitation as to the number or type of offenses. Colorado has an unrestricted law for minors under twenty-one, and Maryland adopted such a law in 1931 for all offenders in Baltimore. Aside from these eight states, all the others have thought it necessary to limit the use of adult probation. Five incorporated the comparatively harmless restriction that probation could not be granted for offenses punishable by death or life imprisonment. Seventeen other states forbid probation in a specified list of serious offenses. Two states forbid probation for any offense punishable by more than ten years' imprisonment; four other states allow probation for misdemeanors only and two states permit probation only for a few minor offenses.

Thirteen states forbid the use of probation after a previous conviction of felony or a previous imprisonment for crime. The so-called Baumes laws in New York State forbid the suspension of sentence or probation to anyone convicted of a felony while armed, as well as to fourth offenders. These laws were copied in several other states, bringing in restrictions not hitherto found necessary. It seems quite evident that these laws were enacted on theoretical grounds to increase the deterrent fear of punishment rather than because of shown abuses of probation.

The earlier probation laws extended the system to all courts which deal with offenders. However, in a number of states only the courts of record or higher courts are entrusted with the use of probation. The lower courts and very commonly justices of the peace

are denied the use of probation, though they have the power to send to jail.

The inconsistency and lack of standards in many of these restrictions are well illustrated by the fact that a law of Iowa forbids the courts to place on probation a person who has a venereal disease, whereas on the other hand, a North Carolina law allows the use of probation only for persons who have such a disease or are convicted of second degree prostitution.

Unfortunately, some states attempt to limit the maximum term of probation to one year or even less. The best laws leave the matter of the term, as well as all other conditions of probation, to be decided by the judge on the basis of individual need.

When it comes to provision for appointing probation officers and other administrative features, there is the greatest variation. Eight states have laws with no provisions for salaried probation officers for adults. A number of others provide paid probation officers only in the larger city courts. Some provide that the sheriffs, police officers or other officials shall act. Other states permit police officers to act, recognizing the incompatability between the task and the temperament required. The number of probation officers to be appointed is left to the discretion of the court in fourteen states or parts of others. County probation systems with officers authorized to serve all courts within a county are developed in New York, New Jersey, Minnesota and Ohio.

Qualifications of probation officers are not generally prescribed. New York has led in this matter by passing a law in 1928 requiring that probation officers shall be between twenty-one and sixty years of age, and shall be "physically, mentally and morally fit," and that they shall have had "a high school education or its equivalent." Best results in securing trained and qualified officers and in removing them from political control are shown in the six states or parts of states where probation officers must qualify through civil service examinations. In a few states appointment or approval of appointment by a state welfare board has been effective and in a few courts examinations by local boards appointed by the judges have accomplished the same end.

In the important matter of salaries there is great variation. In six states or parts of states the courts have full power to prescribe salaries. In others they are fixed by the court with the approval of the fiscal authorities or by these authorities alone. The best results have followed when the courts or other appointing authorities have

full discretion to fix or increase salaries. In many states, however, the salaries are fixed or strictly limited by law. Usually these are low and difficult to change. A national study of probation officers' salaries in 1931 showed the average salary of probation officers, not including chiefs or deputy chiefs, to be $2,094. Since these data were collected reductions in nearly all courts of 10% or over have occurred. Many salaries fall below this amount and are not adequate for the high type of professional service required.

Attempting to ascertain the extent to which probation is used we are confronted with an unfortunate lack of national statistics. We have statistics from certain courts and from a few states, notably New York and Massachusetts, where probation bureaus publish annual reports; but in most other states the figures are not available.

We know that there has been a growth in the use of probation in every state where laws have been passed. In some the growth has been very rapid due to favorable laws, public interest and the effectiveness of state bureaus.

The number of probation officers employed throughout the country has constantly increased, though as yet it is nowhere near large enough to deal thoroughly with the numbers to be investigated and received on probation, to say nothing of extending the system as contemplated in the law.

According to the national directory published every two or three years by the National Probation Association the following increases in the number of regularly appointed probation officers in the United States are shown:

Year	*Probation Officers*
1922	2,656
1925	3,018
1927	3,591
1931	3,955

The distribution of these officers is very irregular, the great majority being employed in sixteen states.

The growth in the number of persons placed on probation is shown from the reports of two states having state-wide systems. The figures are for fiscal years from the earliest year available and for subsequent years at approximately five-year intervals.

NUMBER PLACED ON PROBATION—MASSACHUSETTS

Year	*Adults*	*Children*	*Total*
1909	....	....	13,967
1911	13,084	2,803	15,887
1916	25,325	3,628	28,953
1921	19,424	4,421	23,845
1926	26,851	4,083	30,934
1930	29,633	4,670	34,303
1931	30,518	4,404	34,922

NUMBER PLACED ON PROBATION—NEW YORK STATE

Year	*Adults*	*Children*	*Total*
1908	4,941	2,213	7,154
1913	10,726	5,484	16,210
1918	14,362	7,876	22,238
1923	15,369	6,586	21,955
1927	17,369	6,324	23,693
1932	19,817	6,796	26,613

The statistics from these two states where probation work has been most fully organized indicate that the use of probation with adults (which means in a majority of cases, youths, above fifteen in Massachusetts and over sixteen in New York State) is increasing rapidly while the use of probation with children has been decreasing in proportion to the population, since about 1918. The increase with adults is due not to an increase in crime—there is no clear evidence of this—but rather to the extension of probation service to more courts and its greater use with improved methods and personnel. Probation in children's cases has been quite fully used in these states for many years. The decrease in probation cases appears to result entirely from the general decrease in juvenile delinquency, at least in the number of delinquent children who come before the courts. This is due to the work of the schools and preventive agencies and also is a result of improved work in the children's courts.

Statistics from other states also indicate a continued increase in the use of probation. The application of new laws, more adequate appropriations and increased interest in many quarters account for the continued progress in substituting probation for other forms of treatment.

Probation in the Federal Courts

In the development of probation in this country special interest and importance is attached to the probation service now being rapidly developed in the United States District Courts. Because of the conservatism of the judges and the Federal Department of Justice, the difficulties in obtaining the necessary laws and appropriations from Congress, and the inherent difficulty in setting up a nation-wide plan, our national courts, instead of leading the way, lagged behind many of the state systems and until 1925 had no probation law. In that year, after a ten year campaign carried on continuously, with many ups and downs, by the National Probation Association, an excellent law was enacted. Since then the difficulty has been to secure competent probation officers as rapidly as the judges have placed federal offenders on probation. Although the success and economy of using probation in these courts was clearly demonstrated by the few paid officers made available through the small, experimental appropriations which Congress allowed, it was not until 1930, when the United States Department of Justice became thoroughly converted to the value of the system, and an appropriation of $200,000 became available, that a real test of probation in these courts became possible. Since then the progress has been remarkable. From eight paid probation officers in all the federal courts in 1929, the number has gone to ninety-three officers today, with a large majority of the Federal District Courts equipped. The work is bringing about a humanizing and discriminating service in the courts once thought to be especially hard-boiled and mechanical in their administration of punishment. Where an able probation officer is provided, the judges now use the system extensively and many youthful offenders thereby are saved from a first experience in an overcrowded federal prison or a corrupting local jail. The extension has been rapid. From 4,222 cases reported as being on probation on July 1, 1930, the number has gone to 28,419 on probation March 1, 1933. Recently it was announced that the number on probation had exceeded the number of all federal offenders in prisons. Much credit must be given to the interest of the Bureau of Prisons of the Department of Justice and the employment of a competent Federal Probation Supervisor, together with increased control by the Bureau afforded by the amendments to the law in 1930.

The use of probation in the federal courts has developed so rapidly that the government has not been able to supply probation officers fast enough. The officers are unable to make adequate in-

vestigations or to give thorough case supervision. There is need for a greater control of appointments by the Probation Bureau of the Department of Justice, with civil service examinations provided in order that standards of personnel and training should be established. Through the effective supervision of the Department progress is being made in remedying the defects, and this new service shows promise of leading the country in the results attained.

The Faults of Probation

A critical examination of probation work as it is carried on today in many courts reflects the inadequacy or inconsistency of the laws and policies under which it has grown up. One is frequently confronted by a conflict between ideals and practices. The principles of probation are now generally accepted. There are very few who oppose giving the courts discretion to discriminate between youthful beginners and those hardened in crime, and anyone can see the advantages of helpful personal guidance to those released under the supervision of the court. Objections have been raised to the extension of probation work because it may be misused. Too often it is used without adequate investigation of cases and without a sufficient trained staff to carry on real supervision and case work, which are the essence of the probation method. It has been the rule to enact probation laws giving the courts power to place on probation and to leave the appointment of probation officers to the discretion of the judges and subject to local fiscal control. The system being comparatively new in a number of states, many judges, the fiscal authorities, who provide appropriations, and a great majority of the public are uninformed as to its methods and advantages, and so the law becomes a dead letter or is imperfectly applied.

Some of the chief faults of the new and growing system of probation may be pointed out. A fundamental difficulty is that probation work suffers from the company it keeps. It is attached to a faulty judicial organization, governed by rigid laws and precedents. The probation officer, who is a social worker, works under the direction of the judge, who is trained in law and often lacks knowledge or interest in social science and criminology.

Most judges owe their positions to politics, and in the selection of probation officers politics has been too often a factor. There is need in many quarters that the judges and the public be educated to demand that the skilled and responsible work of the probation officer be put on a professional basis entirely divorced from political con-

trol. This has been, to a degree, accomplished where the examination system has been established. Growing emphasis today on state aid and supervision should do much to remove probation work from local political control.

Upon personal qualifications and ability of the probation officers depends the success of probation work. Other reasons besides political interference have prevented the securing of well qualified officers and enough of them in many jurisdictions. Salaries and appropriations for the work have been inadequate. It has been much easier to secure public funds for prisons and other institutions than for employing the workers who can deal with offenders at one-tenth the public cost and in many cases with better results. Demand on the part of the public and the judges for the training and experience needed for successful work has been slow in developing. In many quarters candidates of the right type have not been available. The newer and more competent probation worker today is a college graduate, having taken special courses in the social sciences, or better still, with a post-graduate course at a school of social work. It is also essential that he or she shall have had experience in case work in a social agency under competent supervision, for as yet no satisfactory plan of apprenticeship training in probation departments has been developed.

The Needs and the Future of the Service

In this article I have pointed out many of the needs of the growing probation service of the country and have indicated some of the corrections which further growth and improvement require. These may be summarized as follows:

(1) Adult probation and juvenile court laws should be made nation-wide and they should be more uniform, adopting the higher standards of the states where they work out best. A complete system requires full discretion on the part of the judges in using probation for all suitable cases with no arbitrary limitations in the law as to the number or type of offenses. There should be the requirement that a thorough social investigation be made in each case before probation is granted and when the need is indicated there should be also a physical and psychiatric examination.

(2) Probation officers, whether appointed by the judges or by a state board, should pass competitive examinations which, including a competent oral examination and experience rating, testing person-

ality as well as education and experience, are today essential. The examinations may be a part of the civil service system of the state or conducted by a disinterested and competent probation board or committee.

(3) More adequate salaries should be paid to secure the higher type of worker needed and an important need, only provided for as yet in a few localities, is for graded increases in salary for successful service, opportunities for promotion and a retirement system for those who grow old in the work.

(4) The organization of all probation work on a county or district basis is recommended. There are many advantages in a single probation department in a county or district with a competent director and where possible, officers on his staff who may specialize with the different types of courts and individuals on probation. Such a department can give competent service to all courts in the areas served, avoiding the inevitable duplication involved in separate probation departments, serving in the same jurisdiction.

(5) The most marked recent development in probation work has been the increased emphasis placed upon the need for assistance and supervision of probation from the state government. State departments or bureaus assist or supervise local probation work to some extent in twenty-one states, but in only a few is the work well organized with a state director and staff. The need for greater state control and for financial assistance from the state in the payment of probation officers' salaries has recently been advocated in a number of states. The advantages and economy to the state in an effective probation service are manifest. The development and coordination of the work in every part of the state necessarily requires state aid and guidance. Separate departments or well-manned bureaus in state welfare departments to organize and develop probation in every state are recommended.

It is evident that today the possibilities of well organized probation work are only beginning to be realized. Wherever judges are found who understand the true functions and possibilities of the service, where adequate appropriations are provided and probation officers are appointed for merit and because of their training and ability and when they serve under competent directors, results in effective treatment of individuals, economy and better protection to society follow. In many of our states so imperfectly has the work been developed and "manned" to date that it can still be said that the system has hardly yet been tried. In other states probation has now become a

thoroughly established part of the judicial system and its value has become so apparent that further extension and strengthening of the personnel is bound to come.

Much remains to be done before there is a general public understanding and cooperation with this service. For this purpose there is continued need for the interest of social and civic organizations, state and national, working in cooperation with the courts and the probation workers to bring the needs and the limitations of the service before the public, to study results, and to insist on higher professional standards.