

1941

Next One Hundred Years in Probation, The

Sanford Bates

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Sanford Bates, Next One Hundred Years in Probation, The, 32 J. Crim. L. & Criminology 324 (1941-1942)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

THE NEXT ONE HUNDRED YEARS IN PROBATION¹

Sanford Bates

"It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us.—" The most trenchant phrase in the martyred president's immortal Gettysburg speech places the same challenge upon us today as it did upon our forefathers to whom it was addressed. "It is rather for us the living—," and as we read the disheartening headlines in the daily press we cannot help feel lucky to be living.

The next one hundred years! We might be pessimistic enough to say that if we can hold together the elements of our Democratic civilization for another hundred years, we will have accomplished something. Probably at no time in the history of the world has there been such an advance in material prosperity as has taken place since John Augustus, the first probation officer, set us a shining example of altruism and common sense in the dingy criminal court in Boston. The last hundred years in America have culminated in an era of material prosperity never before equalled.

The United States, comprising 6% of the world's acreage and 7% of its population, owns 45% of the world's wealth, and its citizens more or less carelessly

drive 70% of the total number of motor vehicles on the globe. Fourteen million of our families live in houses which they own, and the existence of 131,000,000 insurance policies, together with 44,500,000 savings accounts testify to the very general distribution of our wealth. In fact, the wages of the American worker have increased in a hundred years no less than four-fold, while his hours of work have reduced from an average of sixty to less than forty today. More than two-thirds of the total national income is disbursed in the form of wages and salaries. Not only are we the richest country in the world—not only is our wealth more evenly distributed than elsewhere but by comparison with other countries we stand almost alone in this enviable position. One hour's wages will buy seven times as much food in the United States as in Soviet Russia, and two and one-half times as much as in Great Britain and France, and these figures apply to the "normal times" existing before Hitler's murderous war. One person in every four in the United States has an automobile; one in every three and two-tenths a radio; and one in every six a telephone; as compared with 93, 43, and 72 in Italy.

Nor has our progress been confined solely to material or financial things. There are nine times as many American children going to high school as there were at the turn of the century. There are more American boys and

¹ Address by the New York State Parole Commissioner, before the Annual Conference National Probation Association, Boston, May, 1941.

girls in college than in all of the rest of the countries in the world put together. The farmers of the country have been emancipated through the use of the tractor, the cheap automobile, electric power, and the radio. Twelve million American citizens can now hear grand opera, which was formerly the exclusive privilege of the rich, and even the great Metropolitan Opera Company itself is rapidly becoming an American institution. The health of our people was never better. In two generations, the death rate from tuberculosis has been reduced from 200 to 55; typhoid from 36 to 2; diphtheria from 40 to 2. It has been said that 704,000 people are now alive who would not have been but for the contributions of our health and welfare that have been made by preventive medicine in the last few decades. We have developed a public conscience with reference to such matters as workmen's compensation for accidents, old age insurance, slum clearance, adult education, etc. In spite of its occasional falterings, justice is still available to the poor as well as to the rich. We do not have special courts for political prisoners. In America, men and women worship according to the dictates of their conscience, and they are free to think and read and say what they like. One cannot have much patience with those who decry the course of democracy in this country. With only gradual changes, one democratic representative system of government has survived in America for one hundred and fifty years. Let those who seek to undermine its functions ponder deeply upon these facts.

When one contemplates the next hundred years, it is hard to look forward to the continuation of any such bewildering and miraculous advances as we have seen even in our own time. John Augustus, wise as he was, would have tapped his head and smiled knowingly if anyone had told him that he could sit in his darkened house and hear, or even see, the progress of a football game in California.

A sobering question for us to consider today, however, is whether our emotional or altruistic reactions towards life have kept pace with our material and cultural progress. There are those who predict that the very diffusion of so much material prosperity has softened our moral fibre; that the things which made America great were the struggles, the strivings, and the deprivations of its people. There are those who fear that the age of chivalry and courtesy is over. As one who rides in the New York subways several times a day, I am sometimes tempted to share in their pessimism.

Those of us who for many years have been interested in the social problems of the prisoner and the law breaker feel that, while there have been many material improvements in our prisons, which mean that most of the brutalities and cruelties of a hundred years ago have been eliminated, it is still unfortunately true that the progress in the effective, intelligent, and humanitarian treatment of the offender has not kept pace with our progress in many other fields. Well did the great Winston Churchill say thirty years ago:

"The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused, and even of the convicted criminal against the state, a constant heart searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerative processes, unfailing faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored up strength of a nation and are sign and proof of the living virtue of it."

If this is true, it presents to us a challenge for the century that is to come. When one reads over the declaration of principles of 1870, which the American prison association promulgated, one cannot help but question whether we have really made commensurate progress in this difficult field.

Recently, Will Durant pointed out with relentless accuracy that the spiritual well-being of a people does not always advance with its material welfare; that invention and scientific progress may be used to kill people as well as for their welfare, as is certainly being demonstrated in Europe at the present time. Perhaps the greatest task which confronts us is not to permit our material advance to out-run the progress in social, altruistic, or spiritual advance.

Assuming that there is to be a future for our democratic civilization and that we can continue to have confidence that our world is built upon a beneficent plan if we are only wise enough to un-

derstand it and administer it, what is likely to happen in our field? How through a patient and tolerant understanding of those who have broken the law can the probation officer contribute in greater measure to the persistence and permanence of the democratic idea in America?

1. In the first place, of course, the probation officer in the next century will have an even larger place as an advocate or apostle of a newer philosophy in the treatment of the offender. He will look *forward* to what can be done with the delinquent, rather than *back* at what he has done. The motive behind his treatment will be the protection of the public in the future, and not revenge for a wrong committed in the past. He will study and realize to a greater extent than ever before the multifarious causative factors which bring about the specific human problem which confronts him. He will be swayed neither by undue sentimentality for the defendant on the one hand, nor by hatred or impatience or misunderstanding on the other. He will not hesitate to stand four-square before the public on this philosophy. He will be deterred neither by the calling of names nor the fear of ridicule or failure. He will realize that there is no substitute for knowledge or honesty in dealing with offenders. He will not claim for himself omniscience or infallibility. In time we may safely predict that if he stands by this philosophy through stormy weather as through fair weather, in the midst of the crime wave even as when a period of relative civil peace is maintained, he

will convert the body politic to this sound and progressive attitude.

2. The probation officer will look forward to the time when there will be a greater integration in the whole correctional process. In each state or sub-division thereof, there will be a guiding influence in the form of a department of correction that will develop all of the correctional facilities along modern treatment lines. He will insist upon a streamlining or continuity of this process in order that overlapping and duplication may be eliminated, and that a more economical and effective system of control may be developed.

Parole as a *method of release* will soon have become an indispensable part of this correctional process. We will speak more accurately of *subjecting* a prisoner to parole than of *granting* him parole. We shall learn to speak of recidivists not as parole failures but as unreformed inmates. We shall not shrink from the word parole as something involving weakness or venality, but shall recognize institutional after care and supervision as a necessary sequel to a prison term. Nevermore shall we talk about *abolishing* parole any more than abolishing police, or commitment or discipline. We shall concentrate on its improvement and increased effectiveness.

President Roosevelt a few years ago definitely established parole in our penal system when he said:

"We know from experience that parole, when it is honestly and expertly

managed, provides better protection for society than does any other method of release from prison."

Probation, prison, parole together will constitute a protective penal process.

Just because parole sets the stage for the final act in the drama of delinquency, there is no reason why it should accept the blame if the whole performance fails. There is every reason that it should not neglect but make the most of its strategic position. Parole is the acid test of the value of our entire penal treatment.

3. As the years go on, the probation officer will come to realize that hitherto there has been a dearth of expedients in his business. Many a hard-pressed judge has hesitated to choose between confinement in an institution and the almost complete freedom of probation. There will be developed a variety of alternatives which will be classified under the treatment process. The use of all kinds of private and public clinics, hospitals, institutions, boarding homes, employment situations, camps, etc., will greatly expand the kind of prescriptions that can be written by a judge who seeks to cure rather than merely punish. There will be a greater flexibility in the use of the correctional process. No judge will attempt to predict the exact time at which treatment will begin to take effect, nor the degree to which it will be effective. We shall find a way to make correctional treatment as sensible, as flexible, and as effective as medical treatment now is.

4. During the next hundred years, we hope, probation will become a career service, and the qualification standards of its personnel will approach those of the most conscientious advocates of probation today. I am indebted to the Honorable Herbert C. Parsons, without whom it is no exaggeration to say probation would never have developed to the prominent place it has attained in Massachusetts and the country today, for the following quotation by Josiah Quincy, the first of three Boston statesmen, of that name, all of whom were mayors of that city, made when he was a judge of the local court one hundred and twenty years ago:

"The more vicious, the more base, the more abandoned the class of society, on which any department of justice acts, the more and the weightier is the reason, that those who administer it should be elevated above all interest, and all fear, and all suspicion, and all reproach. Everywhere the robe of justice should be spotless; but in that part, where it is destined to touch the ground, where from its use, it must mix with the soil, there its texture should contain and preserve whatever there is of celestial quality in human life and conduct, there, if possible, its ermine should dazzle, by exceeding whiteness; and be steeped, not only with the deep fountains of human learning, but be purified in those heavenly dews which descend alone from the source of divine and eternal justice."

May we not look to the time when no person will contemplate the employment of any but highly skilled and intelligent people to administer the delicate machinery of probation?

5. It is probable that within the next hundred years we shall see a

further departmentalization, or classification, of work with certain age groups. It has been forty years and more since the juvenile court became a separate agency from the tribunal for adult criminals. Within the next decade or so, there will be rapid acceptance of the idea that further classification should be made for the adolescent, the age group from sixteen to twenty-one.

6. I, for one, am wholly satisfied that some time within the next hundred years there will be a general acceptance of the conviction that the court should have less control than now over the process of correctional treatment. A judge, by training and disposition, is versed in the law and steeped in precedent. It is his business to know what has been done and said, and he is not to be blamed—rather is he to be praised for insisting that man's rights against the state are static and determined, and that no majority may take from him that which he has earned and to which he has a right. Our judges, therefore, are particularly qualified to pass upon legal questions, to sit as arbitrator and as interpreter of the law, while the jury decides upon the specific fact of guilt or innocence. When that question is determined and when, in the event of a finding of guilt, the law has therefore authorized the detention or control of the individual, the methods whereby the reformation or correction can be achieved require a wholly different type of expert, which does not take away from our courts one particle of confidence which we have in their ability and judgment as courts.

The plan for a treatment board merely sets up our belief that within the last hundred years we have discovered much that is new with reference to psychiatric treatment, behaviorism, and the etiology of crime and delinquency; and that we are determined within the next hundred years to put our communities in the position where these new discoveries can be applied more efficiently and definitely in the correctional field.

7. Within the coming century, the increasingly important position of the probation officer will, to a greater extent, single him out for a position of leadership in the crime prevention field. It is not only his right but it is his duty to place before his community the knowledge which he has gained in the conduct of his daily routine, in order that the community may profit by his mistakes and, with his guidance and leadership, organize itself and coordinate its efforts toward a more effective crime prevention movement.

8. And I am persuaded to the belief that the probation service of America will not always be contented with the role of advisory service to our courts; that the day is not far distant when probation will be independently organized and administered with the same dignity, initiative, and independence that our hospital systems now enjoy. I have personally noted some indications recently that perhaps the converse is taking place—that the court itself is seeking to retain more and more control over the administration of the details of probation. Several recent judicial decisions strongly imply

that no final disposition can be made by the probation officer without the consent of the judge. In this way, and in other directions that have been observed, the position of the probation officer in the court seems to be taking on more and more the character of subserviency. Probation will retain its rightful place in the correctional scheme when it becomes wholly responsible for the treatment, care, control, and restoration of the wrong-doer from the moment that his guilt is decided by the court. A highly educated probation officer would not long be content to rank with the bailiff or the court officer. His work is important enough and essential enough to justify the expectation and requirement that it be developed as a profession in its own right. Once this conception of probation is established (and you will recall I am thinking about the next one hundred years), we can expect a noteworthy increase in the calibre of men who seek positions in the service. Who knows but that some day our colleges will be awarding the degree of D.C.—Doctor of Correction—which will be as significant, or more so, as any of the other doctorates now being awarded. The probation service may well be the youth correction authority of the year 2000.

9. In the next few decades, the probation officer's faith in himself and in the inherent worth of humanity will be tested as never before. He cannot become discouraged or dismayed. He, of all people, will need to maintain his confidence. In the coming years, his failures may even outnumber those of

the past. He will be wise not to wholly blame the men and women in his charge, but he will accept a joint responsibility for their failure. He will repeatedly say to himself, "If I had known more—if I had had greater patience, or understanding, or wisdom, or toleration, things might have been different." He will remind society, with ever-recurring emphasis, that these failures of his are the failures of the community, and in the next hundred years crime will recede in exact proportion as the community resolutely prepares the kind of an environment in which crime and delinquency do not flourish.

Finally, the probation officer will continue to be the apostle of the second chance, and he will fasten upon the wall of his office those inspiring verses of Walter Malone.

OPPORTUNITY

They do me wrong who say I come no more

When once I knock and fail to find you in;

For every day I stand outside your door
And bid you wake and rise to fight and win.

Wail not for precious chances passed away;

Weep not for golden ages on the wane;
Each night I burn the records of the day;
At sunrise every soul is born again.

Laugh like a boy at splendors that have sped;

To vanished joys be blind and deaf and dumb;

My judgments seal the dead past with its dead,

But never bind a moment yet to come.

I lend my arm to all who say: "I can."

Though deep in mire wring not your hands and weep;

No shamefaced outcast ever sank so deep
But he might rise and be again a man.

Now, every object in the world is composed of minute particles imperceptible to the unaided senses—every splinter of wood, every grain of sand, every pin—even the air itself. The great French scientific detective, Locard, reports that microscopic analysis of air-dust demonstrated that in the air of Paris, at various regions, there were found from 88,000 to 14,000,000 micro-organisms in every cubic meter. If our eye lenses were not limited in capacity, if they had unlimited capacity, each micro-organism might be seen as clearly as a house. What the scientific processes do is simply to enlarge the capacity of our natural senses, by invoking the aid of established laws of physics and chemistry. From: *The Science of Judicial Proof*, (1937) by John H. Wigmore.

This much is worth premising; for to the lay mind the revelations made possible by the aid of scientific processes, unfamiliar in the daily use of our senses, are apt to seem unreal. The truth is that the data thus revealed are positive and omnipresent realities. Our failure to perceive them ordinarily is due merely to the imperfections of our bodily optic lenses and aural tympan. The scientific instruments are to the normal person (trained in their use) just what a good eye-glass or audiphone is to a person of limited vision or audition. From: *The Science of Judicial Proof*, (1937), by John H. Wigmore.