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## PROBATION, PAROLE, AND LEGAL RULES OF GUILT<sup>1</sup>

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A system of medical science in which the sole or major mode of treatment of human ills consisted of the amputation of the diseased member of the patient's body would not be tolerated in our present state of civilization nor was it ever the rule. Oddly enough our traditional major method of social therapeutics for handling the disorders of conduct called crime has involved the amputation of the diseased member—the criminal—from the body of society by execution or incarceration.

Medical science is constantly improving its methods for curing physical and mental ills. Penal science, as manifest in criminal law, is slower to avail itself of more modern and intelligent methods for treating its disordered members, the criminals. Less rigorous curative methods than amputation are available both to the medical profession and the criminal law enforcers. The latter group has available for curing society's disordered members the devices of probation and parole, *i. e.*, the conditional liberation of convicted criminals pending good behavior and under proper supervision.<sup>3</sup> The scientific application of these devices comprehends a careful personal and subjective investigation of the offender's aptness for this mode of treatment and a supervision of his activities during the

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<sup>1</sup>The writer is grateful to the Hon. Joseph N. Uiman, Associate Judge of the Supreme Bench of Baltimore City, for his kindness in having read and criticized the manuscript of this paper.

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<sup>3</sup>The Third Annual Report (1932) of the Probation Department of the Supreme Bench of Baltimore City gives the following description of probation:

*"What probation is.* Probation is the release of the offender, without confinement, upon conditions imposed by the court, for a definite period of time, under the supervision and guidance of a Probation Officer, for the purpose of readjusting the offender to normal citizenship; and represents constructive effort in changing his habits and attitudes, enlarging his social relationships, and developing a proper consciousness of social responsibility."

*"What probation is not.* A form of leniency or 'getting off.' Sentimentality, with the admonition 'not to do it again.' A concession to 'the first offender' so called. The giving of 'another chance' as such. A magic word which, of itself, transforms human beings. 'Coddling the criminal.' A hit or miss policy in showing 'mercy' to offenders. A greater regard for the offender, than the injured citizen and the interest and welfare of the state."

period of its continuance. The two devices differ<sup>4</sup> in that probation, legalistically a form of suspended sentence, is granted immediately upon conviction and is in lieu of a sentence to incarceration, whereas parole, legalistically a form of pardon or commutation of sentence, is a method of release from a sentenced incarceration after part of the term has been served. Implicit in both is the idea that it is possible in some cases to protect society from the anti-social conduct of criminals by less rigorous methods than their incarceration or social amputation.<sup>5</sup>

In orthodox societal treatment there is the dual problem of, first, selecting the recipients of treatment, *i. e.*, the matter of guilt or innocence, and, second, that of the details of the treatment afforded the selected group, the guilty, convicted ones. In the probation-parole area there is a parallel dichotomy, first, the matter of choosing those who are apt for conditional liberation, and, second, that of the proper supervision of those who are thus liberated. Much has been written and will be in the vein of contrasting incarceration and probation-parole as techniques for societal treatment of those chosen for such modes respectively. Much can be said in favor of conditional liberation from the standpoint of the saving of the expense of incarceration, of the benefits to the dependents of the convicts, and of the improvement in the morale of the convict himself.<sup>6</sup> At this time the writer proposes to consider probation and parole from the other angle, by contrasting the underlying policy of the choice of subjects for its application with that of the common law rules of guilt finding which make a choice of the subjects for societal treatment. This will be done in order to trace common denominators of purpose or

<sup>4</sup>Johnson, *Probation for Juveniles and Adults*, p. 5.

"Probation and parole should not be confused. They are alike in that the offender is permitted to live as a member of the community under some form of supervision. They are unlike in that after guilt has been established, probation is a substitute for commitment to an institution, whereas parole follows commitment and a period of incarceration. . . .

"The administration of these two forms of supervision is generally carried on by distinct governmental units. Whereas probation is commonly a branch of court work, parole is either a function of a state board or under the direct oversight of a correctional institution. The one is administered under judicial, the other under administrative control."

<sup>5</sup>Glueck, Chapter I in *Probation and Criminal Justice*, Glueck, ed., at pp. 8-9 uses the figure of "entombment" as descriptive of traditional methods of societal treatment.

<sup>6</sup>Johnson, *op. cit. supra* note 4, 83-4, lists as the "advantages of probation" the following: (1) the offender continues a normal social life; (2) the offender avoids the demoralizing influences of incarceration; (3) dependents are supported; (4) there is some control over slight offenders who might go totally free; (5) restitution may be made for property stolen; (6) it is relatively more economical.

function. The problem is this: To what extent does the scientific use of probation and parole accord with or depart in spirit from the attitude of the substantive rules of guilt-finding in their function of determining whether the accused shall be subjected to societal treatment or not.

Conditional liberation and traditional penal treatment involving acquittal or orthodox punishment have in common the making of a choice between liberty and incarceration for the accused. Thus we can make a comparative treatment of these two systems, *viz.*, the rules of substantive criminal law and a scientific choice of fit subjects for probation and parole. The jury trial rules of guilt choose between liberty and societal treatment for accused offenders. The probation-parole devices today make a further demarcation of the group chosen by the courts for societal treatment and purport to determine the exact nature of this treatment, *i. e.*, incarceration or conditional liberty, social amputation or constructive therapeutics. How far is the choice of each agency dictated by common policies?

It is the function of the substantive rules of guilt to guide the courts and juries in selecting those of the accused offenders who are in need of societal treatment. These rules of human guilt require, in the name of specific defined crimes the details of which comprehend them, that three abstract elements of criminality shall be present and concur before guilt of crime, *i. e.*, need for societal treatment, is decided. These elements are: (1) a *corpus delicti*, or legally recognized social damage, (2) causation thereof by the defendant in a legally recognized way and (3) some manifestation of an anti-social tendency or criminal intent on his part, which tendency may be shown either by the bare causation of the social damage for some crimes or by proof of certain definite extrinsic operative facts in the case of the others.

The substantive rules of guilt reflect a mixture of conflicting or overlapping human attitudes about the nature of punishment for crime. It is proposed to approach the problem of the relation between the guilt rules and the probation-parole devices in terms of the classification of these human demands concerning punishment. These attitudes fall into three groups, roughly approximating the three elements of criminality mentioned above. These groups are vengeance, deterrence, and recidivism. The substantive rules of guilt have vestiges of all these theories underlying them. The probation-parole devices primarily emphasize the last, *viz.*, those concerned with recidivism.

The *vengeance* theories represent a human attitude that punishment for crime should be punishment *qua* punishment, a mode of retribution, a substitution of state vengeance for private vengeance and an avoiding of the disorders incidental to the latter. In the name of *deterrence* we see a second human demand that society should be protected against future criminality by men generally by punishing the instant offender in such a manner as to frighten the others out of criminality. The third human belief is that the object of punishment should be to protect society against *recidivism*, *i. e.*, future criminality from this very offender. This is thought to be accomplished by incarcerating or otherwise treating the offender so that he may be reformed, frightened, or segregated, should any of these be necessary in the event that his conduct indicates that otherwise he will be a future menace to society. Implicit in these theories respectively are the ideas that societal treatment should depend on the demand for vengeance for the type social damage, the need for deterring socially dangerous type conduct, and the likelihood of recidivism or anti-social tendency of the instant offender. The substantive rules of guilt mix together these ideas by means of specific operative facts in criminal definitions, the selection of which is based on assumptions which concern the average or normal man and are expressed by means of the words in these definitions.

### *Vengeance.*

The idea that societal action for crime should be state vengeance for occurred social damage is perhaps the oldest and least intelligent<sup>7</sup> of the three general human demands concerning the treatment of criminals. We see it reflected in the substantive law of guilt by the general requirement of a *corpus delicti* or occurred social damage raising a human demand for vengeance. The details of the rules concerning criminal attempts and the consent defense reflect this attitude as do all problems of the *corpus delicti* of specific crimes.<sup>8</sup>

How do probation and parole stand under this theory of criminal punishment? When we give an offender conditional liberty by one of these devices, in effect we refuse to adhere to the alleged

<sup>7</sup>Margolin, *The Element of Vengeance in Punishment*, 24 *Journal of Criminal Law and Criminology* 755-766 (1933) points out how inescapable is some legislative and judicial respect for the vengeance attitude.

<sup>8</sup>Typical problems of the *corpus delicti* include, for murder, whether an allegedly murdered child was born alive before the act; for arson, whether the burned building is a dwelling house, or whether there has been a burning; for rape, did the prosecutrix consent; for burglary, was there a breaking; for larceny, was the property subject to larceny.

human demand for vengeance which by such traditional standards calls for his punishment by incarceration. Were the vengeance theory correct, the use of probation and parole would lead us to expect those disorders incidental to private vengeance which the imposition of state vengeance is supposed to guard against. But these disorders have not occurred with much frequency after the non-punishment of earlier offenders by acquittal, short sentence, and pardon, nor because of liberation on bail pending trial.<sup>9</sup> We need not expect them to occur with any more frequency in the event of the use of the more intelligent processes of conditional liberation. The fact is that the use of probation and parole causes but little loss in terms of the vengeance theory inasmuch as the possibility of incarceration still remains to check the tendency to private vengeance. What little loss there is is counterbalanced by the gains under the recidivism attitude which, as we shall see, has long existed together with the vengeance attitude. What is needed is to educate the public to the extent that the demand for vengeance will be satisfied by societal action of an intelligent sort and not necessarily by incarceration alone.

#### *Deterrence.*

More respectable than the vengeance theory is the idea that the function of criminal punishment should be to protect society against future crimes from all men by so treating the instant man that the spectacle will frighten his contemporaries out of the crimes which otherwise they would commit. In furthering this idea of punishing that conduct which is the most desirable of being deterred on the part of men generally in order to discourage imitation and its anti-social consequences, the law of guilt contains the general requirement of the causation of the social damage by the accused. This general proposition includes, as vestiges of deterrence in the law of guilt, the rule of proximate cause; all the rules of the vicarious guilt of principals, accessories, and employers; and the crimes of omission. The common denominator of all of these is to emphasize the type causative conduct, *i. e.*, that the most in need of deterrence, or the most socially dangerous.

To what extent does the use of probation and parole assist or

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<sup>9</sup>As far as the human demand for vengeance goes, what difference is there between liberation on bail pending trial, often for a long interval, and conditional liberation under supervision for the period of good behavior? Chute, *Probation in the United States*, Chapter X, in Glueck, *op. cit. supra* note 5, 227, points out that the Massachusetts probation practice was originally "bailing on probation."

hinder the performance of the deterrence function of societal treatment? One is accustomed to hearing, in opposition to the extension of these devices, that conditional liberation tends to diminish the deterrent threat of punishment and that a criminal will calculate on the possibility of conditional liberty and therefore will the sooner commit a crime than if it be not possible.<sup>10</sup>

This attitude seems fallacious for two reasons, first, it is based on an erroneous assumption that criminals carefully measure out the prospects of the extent of societal treatment before committing crime, and, second, it fails to recognize that deterrence properly administered is as much if not most a matter of the swiftness and certainty of some societal treatment as of the nature or extent of that treatment in detail.<sup>11</sup> It seems to this writer that the only way deterrence does work is by holding out the prospect of certainty of happening of some swift societal treatment for misconduct.

By such standards the extended use of probation and parole should cause no lessening of efficiency along deterrent lines. Proper supervision incidental to conditional liberation can, to some offenders and to enough of them to outweigh those who calculate on it as an inducement to crime, be sufficiently onerous itself to be a deterrent threat.<sup>12</sup> Occasionally one hears of offenders who prefer incarceration to probation in order "to get it over with."<sup>13</sup> But even if conditional liberation be to most men more pleasant than incarceration, still the chances of securing it are no greater than the existing chances of acquittal, short sentence, and pardon. If conditional liberation

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<sup>10</sup>Johnson, *op. cit. supra* note 4, 85-6, lists as the "objections to probation" the following: (1) It does not deter, promotes recidivism and increases crime; (2) It removes the incentive to prosecution; (3) The delinquent is returned to his unfavorable environment; (4) Probation officers are not qualified to make proper selection; (5) Probation is frequently granted for political reasons.

<sup>11</sup>See Burt, *Legal Psychology*, 380-383, for a discussion of the relative deterrent effect of severity of punishment and certainty of punishment.

<sup>12</sup>Cooley, *Probation and Delinquency*, 22-4, under the heading of "Probation as a form of punishment" brings out the following facts to show that probation may be made punitive. It requires obedience to conditions and restricts conduct and associations, it requires the inconvenience and hardship of regular reporting, it keeps the probationer under surveillance, often causes humiliation and leads to remorse, holds out the threat of incarceration for violation, and may include a requirement of regular payments to the victim or the probationer's own family.

<sup>13</sup>Mr. Sanford Bates, Federal Director of Prisons, in a public address in Baltimore on February 21, 1933, made the following statement: "One of the Judges of our Federal Courts has recently stated: '. . . The deterrent influence of a probation term received striking illustration when counsel for a defendant sentenced under the Prohibition Act, informed me that his client preferred to serve his term in jail, which I had suspended, rather than to serve the year's probation which I had imposed.'"

See also Mr. Bates' chapter, *The Growth and Future of the Federal Probation System*, in Glueck, *op. cit. supra* note 5, containing the same quotation.

be properly applied there is little chance of the prospect of it influencing the "choice" of the mythical offender who does careful research into the consequences before he offends.

As can be said for both the vengeance and deterrence theories, the most scope that should be given to vengeance and deterrence should be to discourage private vengeance and to deter others from committing crimes by the spectacle of the prompt application of *some* societal treatment, the internal nature of which should be dictated solely by considerations of recidivism. The satisfaction of human demands for vengeance and the deterrence of men generally should be incidents of, rather than measures for the application of, societal treatment.

### *Recidivism.*

Perhaps the most modern and most intelligent approach to the question of criminality is the attitude that the administration of societal treatment and the application, nature, and extent thereof should primarily be gauged in terms of the prospects of future misconduct by the very offender himself. Under this attitude the nature of societal treatment should be such as, at best, works the reformation of the offender if he need reforming, or, at worst, frightens him into the path of good behavior or segregates him where he cannot, during confinement, be a social problem. Whatever be the motive of the treatment, the test of the application of it by conviction for crime in court should be that of whether the offender is likely to be a recidivist. If not, *i. e.*, if despite his present causation of social damage he has no anti-social tendency for the future, there is no need of reforming, frightening, or segregating him. To the extent to which his tendency is slight, he can be acquitted or the treatment scaled down.

Probation and parole purport to follow to the fullest this attitude concerning punishment.<sup>14</sup> The theory behind the scientific use of these devices is that it is possible to discern in the total mass of convicted offenders those whose anti-social tendencies are slighter than the rest and whose slighter likelihood of recidivism can probably be cured by less rigorous means than incarceration.<sup>15</sup> The theory is that

<sup>14</sup>For particular emphasis on the recidivism element in probation see Hall, *The Extent and Practice of Probation in England*, Glueck, *op. cit. supra* note 5, 276-96. On Probation in England see also Kenny, *Outlines of Criminal Law*, 12th ed., 507-12.

<sup>15</sup>Johnson, *op. cit. supra* note 4, chapter III, 31-43; Cooley, *op. cit. supra* note 12, chapters IV, V, VI, 55-115; Glueck, *op. cit. supra* note 5, Part II, chapters III, IV, 49-99.



those fit for conditional liberation need only to be reformed by mild devices and do not need to be frightened or segregated. Those with greater anti-social tendencies, who are unfit for conditional liberty, do need these more violent devices for protecting society against the greater likelihood of future crimes from them. Those with the slighter tendencies, calculated to be cured by the probation-parole devices, are believed not so thoroughly to have manifested sufficient likelihood of recidivism as to call for continuing incarceration.

The legal rules of guilt themselves contain many devices functioning on this basis of acquitting those who, despite actual causation of social damage, do not possess sufficient anti-social tendency or likelihood of recidivism to merit societal treatment of any sort. The whole requirement of criminal intent is such a device. In its many ramifications this *mens rea* device is a vehicle for enabling juries to acquit those who lack the need for reformation, frightening, or segregation, and to convict those who do have the anti-social tendencies raising this need.

Criminal intent is, for some crimes, implicit in the bare fact of causative conduct. This is because for these crimes, the nature of the crime, or the nature of the conduct, is such that the bare fact of causation shows sufficient anti-social tendency to merit conviction. The man who, unknowing its nature, sells adulterated food or hard cider today is likely to do so tomorrow and so we convict him without any extrinsic proof of intent.<sup>16</sup> For other crimes, in varying degree, it is thought that the likelihood of recidivism is not intrinsic to the causative conduct. Hence it must be shown in the name of selected extrinsic operative facts of conduct or intent written into the definition of the crime. Before we hang a murderer we require proof of the highest sort of anti-social tendency in the name of "premeditation" or some equivalent course of conduct. The negligent motorist who kills a pedestrian is punished only for manslaughter because negligence, while showing enough anti-social tendency for some societal treatment, shows only a slight amount and so is given but slight treatment. One who kills quite accidentally and without negligence goes free because it is believed he has too little anti-social tendency for *any* societal treatment.<sup>17</sup>

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<sup>16</sup>*Commonwealth v. Weiss*, 139 Pa. St. 247, 21 Atl. 10, 11 L. R. A. 30, 23 Am. St. Rep. 182 (1891) (oleomargarine), and *People v. Hatinger*, 174 Mich. 333, 140 N. W. 648 (1913) (cider).

<sup>17</sup>In the homicide cases there are constant corpus delicti and causation elements with the variation found in terms of the mens rea or anti-social tendency. Thus with the same corpus delicti-causation set-up we can have the results, criminally, of acquittal, involuntary manslaughter, voluntary manslaughter, sec-

The distinction between the simple assaults and the aggravated assaults is a matter of a differing anti-social tendency expressed for court room purposes by the higher requirement of "intent to kill," for the latter crimes. "Knowledge" as an element of the crimes of receiving stolen goods or of uttering counterfeit merely recognizes the possibility of innocently doing these things and thus there results the conviction of those only who show by their "knowledge" the requisite anti-social tendency.

Then, all of the "non-intent" defenses, save insanity,<sup>18</sup> also function on a basis of acquitting those who possess less than the requisite likelihood of recidivism. Infancy, intoxication negating specific intent, mistake of fact, mistaken application of law, entrapment, duress, defense of person and property, prevention of felony and escape, arrest and enforcement of law, all are legal devices of guilt-finding, the *raison d'être* of which is a demarcation of the potential recidivists from the others. We exempt, for instance, one who has killed under a justifying mistake of fact because we feel that the mistake indicates that his killing is a sporadic thing and not a manifestation of his personality and tendencies. The common law defense of infancy merely recognizes that we can the less predicate an anti-social tendency from infant conduct than we can from similar conduct by an adult.<sup>19</sup>

Not only is the recidivism approach recognized in these legal rules of intent, but there are other devices connected with the system of penal treatment which also reflect this attitude of awarding punishment in terms of future tendencies. In addition to probation, parole, suspended sentence, and pardon, we have indeterminate sentence, the Baumes laws, judicial discretion as to length of sentence, the Juvenile Court system, and the classification and separate

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ond degree murder and first degree murder, in an ascending scale of severity of societal treatment paralleled by an ascending scale of likelihood of recidivism.

<sup>18</sup>The insanity defenses can hardly, except possibly for the rejection of irresistible impulse, be considered as exemplifying the recidivism theories. Mental disorder as such probably indicates more, rather than less, likelihood of recidivism. Rather the insanity defenses are to be explained in terms of sympathy for the accused, negating a human demand for vengeance; or by the idea that he himself is incapable of being deterred by punishment; or because of an idea that the punishment of one unable to choose will disgust, rather than frighten and deter, his fellow men.

<sup>19</sup>This statement, as with the others concerning the functional background of various rules of guilt, is a description of what the instant rule purports to be doing. While the common law infancy defense is probably grounded on a belief that infant conduct the less manifests a likelihood of recidivism than does similar conduct by an adult yet the trend of research into juvenile delinquency is such as to indicate that it is actually easier to predict future delinquency from infant conduct than from adult conduct.

treatment of different classes of offenders. All of these have vestiges of this idea of recidivism as the guiding consideration in penal treatment.

When we contemplate these traditional and well established devices both of the traditional law of guilt and of penal treatment functioning in terms of this the most modern theory of criminology, we can see that probation and parole are not such radical departures after all. These devices of conditional liberty merely purport to do what the intent part of the law of guilt has long done, to separate classes of accused offenders in terms of their respective anti-social tendencies and to apply less rigorous treatment to those with the slighter recidivistic tendencies. Viewed in its proper relation to the law of guilt the conditional liberation concept seems quite mild.

Both the devices of conditional liberation and the intent requirement of the law of guilt with its concomitant criminal defenses purport to make this investigation of the anti-social tendencies of accused offenders. The difference is that the law of guilt approaches it in an objective manner and the probation-parole processes in a subjective one. The legal rules of guilt concerned with recidivism must by nature be rules of thumb.<sup>20</sup> They are bottomed on certain type assumptions about the normal or average man, have to be expressed in formulas, and in such simple formulas as to be capable of being used by juries, in the haste of jury trials, as yardsticks for measuring the run of offenders. As a consequence one can hardly expect perfection in the resultant demarcation of offenders into the guilty and the innocent in terms of anti-social tendency. The job is frankly an amateur one from start to finish although the purpose is to look into the problem of recidivistic tendencies.

We tell the jury, in effect, "Use the formulas we give you to decide whether this defendant has enough anti-social tendency to need some societal treatment." We take the jury's word that the

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<sup>20</sup>The Third Annual Report (for 1932) of the Probation Department of the Supreme Bench of Baltimore City, page 8, quotes Judge T. Scott Offutt, of the Maryland Court of Appeals: ". . . it often happens that in the steady grind of Court routine, the shades and shadows of individual cases receive scant attention, and punishment is imposed by a sort of rule of thumb by which its severity is gauged by the character of the crime rather than by its effect on the individual. Naturally in the enormous mass of material ground through the Criminal Courts there is much that can be reclaimed, and by proper treatment restored to society to play a useful part in life. In every case where that is discovered, there is a probability that one laborer may be saved to do useful work, and that the state will be saved the burden of supporting a drone in idleness."

This is taken from a public address by Judge Offutt, delivered in Baltimore on March 3, 1932.

acquitted ones do not need treatment. Although some of them no doubt do, constitutional considerations preclude us from looking further into their needs. With the guilty group, held by the jury to have such a likelihood of recidivism and consequent need for societal treatment as the jury standards may indicate, we can look further into the question to see whether some of this group can do with less than normally rigorous societal treatment to cure *their* recidivistic tendencies.

In doing this the probation-parole devices seek to achieve the same end as most of the jury rules of guilt, *viz.*, an investigation of the offender's potentialities for the future. But they do it by an entirely different technique. Where the jury trial is hasty, objective, based on formulas derived from ancient assumptions about the average man, the probation-parole investigation, properly applied, is leisurely and careful, subjective, based on a personal investigation of this very man, backed up by a psychiatric examination and a social case work study.<sup>21</sup> Both the jury and the probation-parole official are engaged in making a guess as to the future conduct of the offender. One difference is that our rules of criminal intent are so crystallized that juries probably do not realize what they are guessing about, whereas the official in charge of conditional liberation should be and is, probably, aware of the nature of his guess.

Probation and parole offer an improved and more expert way of doing what the rules of criminal intent and the defenses based thereon have long been trying to do in a non-expert manner, the making of a guess as to the future. To further this motive of the system of criminal law does not seem to the writer a step to be doubted. Earlier generations traveled to the Pacific in covered wagons. We today can do it much more efficiently by plane, train, or automobile. We do the same thing in a better manner. So we do when we use intelligently administered probation and parole.

#### *Summary.*

The legal rules of guilt mingle ideas of vengeance, deterrence, and recidivism. At first sight the use of probation and parole seems to deny the former two theories and to hold only to the last. More careful insight discloses, however, that we have already become accustomed to a partial denial of these first two demands by bail, ac-

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<sup>21</sup>See Cooley, *op. cit. supra* note 12, 55-56, and Healy, *The Practical Value of Scientific Study of Juvenile Delinquents*, 12, for treatments of the relative merits and demerits of the social and legal ways of handling offenders.

quittal, short sentence, and pardon. Thus the loss of avenging and deterrent effect is but a relative matter. For that matter, it is partially compensated both by the significance of conditional liberation as itself avenging and deterrent societal treatment, and by the gains made possible in the prevention of recidivism.

Just as the function of the rules of criminal intent is to abstain from societal treatment when the offender possesses too little anti-social tendency to call for it, so it is the function of probation and parol to abstain from the more rigorous devices of societal treatment if and when the offender's anti-social tendency is sufficiently slight to be handled by the slighter form of treatment—conditional liberty.

We have become accustomed by the rules of criminal intent to granting absolute liberty by an unscientific process. What is wrong with granting conditional liberty by a more efficient method seeking to serve the same ends, *viz.*, the prevention of recidivism?