

## **THE ENGINEER, THE EDUCATIONALIST, AND THE FEMINIST WRITER: NATIONAL CHAMPIONS AND THE DEVELOPMENT OF PROBATION IN EUROPE.**

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### **Abstract**

Probation developed throughout the world as a result of a variety of different elements and social conditions coinciding within a relatively short period of time at the end of the 19<sup>th</sup> century and beginning of the 20<sup>th</sup> century. Amongst these were the efforts of a number of people from different disciplines who shared an interest in giving people who were at the beginning of their criminal careers a second chance. This paper highlights the contributions of three of these people in an attempt to throw more light on how the concept of probation passed into law, how it attracted disparate interests in Europe, and what that reveals about the state of probation today.

### **Keywords:**

Probation – Humanitarianism - Punitive populism – Criminal justice.

### **Introduction**

In a recent paper I attempted to explain how the concept of probation<sup>1</sup> in various forms proliferated throughout the world in the last quarter of the 19<sup>th</sup> century and first quarter of the 20<sup>th</sup> beginning with Massachusetts in 1873 and ending in Uruguay in 1916 (Vanstone 2008). I concluded that this could be attributed to the socio-political and humanitarian exigencies of governments, the sacrosanct status of probation as a faith-based science, its fortuitous emergence when faith in prison was waning and optimism about the scientific normative potential of the new sciences of psychiatry and criminology was increasing, and its theoretical, practical and moral adoption by ‘powerful national champions of reform’ (739). Although the conditions and elements referred to above were essential to the development of reforms such as probation, more than anything else that development was dependent on the interest, motivation, energy and enthusiasm of those champions. As some historians have explained (Cornil 1933: Timasheff 1943), the actual placement of probation on the statute books of European countries invariably resulted from specific attention to the issue from Ministers of Justice (Lejeune in Belgium, Eyschen in Luxemburg, d’Azevedo in Portugal, Schönborn in Austria) a jurist (Hagerup in Norway), a prison director (Wieselgten in Sweden), and academics (Wirth and Appelius in Germany, Fayer in Hungary, and Tagantseff and Piontkovsky in Russia): these were men of power and their contributions were crucial. However, in most historical accounts other perhaps

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<sup>1</sup> The particular form of probation associated with the three influential people in this paper involves the element of supervision in addition to the suspension of sentence.

less powerful individuals nurtured and sustained the idea over a number of years before it became a reality in law: some were associated strongly with the criminal justice and penal systems, but some were from different backgrounds and disciplines and had other quite distinct interests. Why this should be might indicate something of significance about the nature not just of probation at the end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> century in Europe but also about how people who transgressed the law were categorised and conceptualised. Three such people – an engineer, an educationalist and a feminist writer – although not necessarily typical will illustrate the point. It is not suggested that they were the most important figures in the development of probation but meeting them will increase our understanding of the relevance of individual interest, commitment, motivations and philosophies of such people, how the activities of one were often built upon by another, what it was about probation that attracted such incongruous interests, and how they contributed to cross border influence particularly in Europe.

Before we met them, it is important to recognise that the emergence of probation laws recognisable to the modern eye was part of a process, and that they were often preceded by similar legislation, sponsored by key people, which provided a platform for what was to follow. Two examples will illustrate this point. Timasheff (1943) attributes the introduction of probation into France to Senator René Bérenger<sup>2</sup>, and indeed probation may not have been introduced in France as early if it was not for the introduction of his May 26<sup>th</sup> 1884 Bill which was intended to address the issues of mitigation and aggravation in the application of punishment; but that is as much as can be said about the Bill's relevance. The form that the law actually took resulted in what Weatherburn and Bartles (2008) identify as the first instance of the modern form of suspended prison sentence. Certainly, like Vincent in the United Kingdom (see below) Berenger's law laid the foundations of later probation, but a number of factors diminish Timasheff's claim that it introduced probation in the fundamental form we know it. The Bill only partly dealt with probation, and in any event he had knowledge of the 1879 United Kingdom's Probation of First Offenders Act but no knowledge of the American system, and only vague knowledge of the English Common Law tradition of recognizance and the implicit oversight of the individual's subsequent behaviour. Moreover, the focus of his law was on prevention of imprisonment rather than on the rehabilitation of the individual. As Timasheff attests, he imitated the pattern set out in the 1879 United Kingdom law but omitted measures inherent in that law related to influencing behaviour, and replaced the suspension of sentence (the essence of probation) by the suspended execution of sentence. This was his one concession to influencing behaviour in the sense that he intended the suspension of execution of sentence to impact on the psychology of the individual, thus placing it much closer to the modern suspended prison sentence than modern probation (in which the threat of return to court is an element of influence but supervision more so). This suggests an interest more in the law than the psychology of the individual, but that does not mean he lacked humanitarian concerns: like other humanitarians of his time his concern for others was tempered by moral rectitude and selective judgement as his involvement in the movement to protect the young from the exploitation of prostitution (Donovan 1994) whilst remaining pro-regulation and anti-abolitionist demonstrates (Limoncelli 2006). Not only did he share the bourgeois concerns of

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<sup>2</sup> In a report of his death in the New York Times (30th August 1915) he was referred to as the 'author of the suspended sentence law' and a 'vice crusader'.

political elites across Europe, he adhered more to the controlling and regulatory potential of the law than the normative possibilities of help-focused intervention.

The second example is that of Howard Vincent barrister, MP for Central Division of Sheffield, former Director of Criminal Investigation at Scotland Yard, and ‘a social imperialist, believing in the reciprocal dependence of the welfare of all classes and the maintenance of empire’ (White 1979: 617) who following a visit to Massachusetts introduced the Probation of First Offenders Bill in 1886. As Bochel (1976) explains, he was influenced by the supervisory work of the police carried out under the Prevention of Crime Acts – in essence, the supervision of convicts released from prison under the ticket-of-leave system – and this led to the failure of this legislation to promote that essential element of probation, supervision. His proposal that the police should supervise first offenders was met with considerable opposition from amongst many, the Assistant Commissioner of the Metropolitan Police, the Chairman of Lancashire Quarter Sessions, and the Chief Metropolitan Magistrate (Bochel: 11). More tellingly, in the second reading of the Bill the Home Secretary vehemently opposed the idea, and despite some compromise by Vincent to change the proposed supervisor to some ‘authority’ the Bill arrived at the statute book ‘with no vestige left of the principle of supervision’ (Bochel 1976: 14). Early attempts at legislation like these created a reference point for the champions of probation, but as we shall see it was the nascent probation system in America that provided their reference book. Before examining what they did, we should meet them.

### **The engineer**

Edouard Julhiet was born in Nantes, the son of Saint-Ange Pierre Félicien Julhiet, President of the Cour d’Appel, so he would have been familiar with the justice system. He was a graduate of the Ecole des Mines de Paris where he studied mining and metallurgy, and when he was subsequently employed in the financial studies department of Crédit Lyonnais he was sent to South and Central America and the United States. Clearly well regarded as a consultant, he was judged to be a man of conscience and strong religious convictions. He lived in America from 1902 to 1906 and it was whilst there that he became acquainted with the newly established Juvenile Court system in Chicago and he devoted much of the rest of his life to the subject.

### **The educationalist**

Originally from Barry in South Wales, Miss E. P. Hughes was a prominent educationalist who moved from the Ladies College, Cheltenham, to become Principal of Cambridge Training College for Women Teachers until 1899.<sup>3</sup> Following her departure from Cambridge she acted a representative for British Higher Education at the Higher Education Congress in America, and from there she went to India and Japan. It was in Japan that she made enough impact to be made Professor of English at three universities (including Tokyo) and to have the Emperor reward her services to the education of women. When she returned to Barry she continued to devote herself to the cause of women and played a prominent role in setting up the unique 20th Century Club for women. Her interests encompassed health and nursing and in 1910 she was behind the creation of a voluntary nursing organisation which subsequently made a significant contribution in local hospitals during the 1st World War. She also published papers on nursing.

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<sup>3</sup> [www.barrywales.co.uk/tomclemett/townbuilders.asp](http://www.barrywales.co.uk/tomclemett/townbuilders.asp)

### **The feminist writer**

Describing Lucy Re-Bartlett (Re-Bartlett as she was to become when married) simply as a feminist is to underrate her multi-dimensional talents and interests. In her Times obituary<sup>4</sup> she was described as a remarkable women who, because of her American mother and Scottish father, ‘combined in rare degree the logical outlook of the Scot with the open-mindedness and fearlessness of the American woman’! She is probably best known for her books on women and their place in society, for example, *The Coming Order* in 1911, and *Sex and Sanctity* in 1912 and *Towards Liberty* in 1913, in which she outlined a theory of human evolution that culminated in spiritual love: her other books included one on probation in American cities and a novel.<sup>5</sup> In addition to her writing, she was involved in the penal reform movement, spent time in India studying philosophy under the tutelage of women’s rights activist, Anne Besant, sat on the Howard Association committee, and was an honorary member of La Societa Italiana di Sociologia and La Société de la Suisse pour la Réforme Penetentiaire.

### **A common interest and the *Grand Penal Tour***

So what contribution to the emergence of probation did these very different people make? As I have suggested, it is not necessarily the most significant contribution – it was an element in an array of different influences - but it is of interest nevertheless because of the particular beam of light it throws on the founding of probation. Rollet (1933) describes the influence of Edouard Julheit on the introduction of probation into France. Julheit’s experience in America when a prototype Juvenile Court system was being tried in Chicago prompted him to press for similar developments in France.<sup>6</sup> His keynote address to the Social Museum in 1906 stimulated a sequence of events - the reproduction of his address in the journal *L’Enfant*, the publication of a book on the issue prefaced by Senator Bérenger, discussion at the Seventh National Congress of the Patronage of Release, visits to England and Germany by Social Museum delegates, and attention to the issue by the Société Générale des Prisons - which culminated in legislation in 1912. Moreover, Julheit co-operated directly with Judge Rollet in setting up a system of supervision in Paris for children referred to the Children’s Court by the lower courts, and the extent of his involvement is evidenced by the fact that drafted guidelines that supervising officers (délégués) had to be French and over 21 years and encouraged recruitment from child protection and welfare workers. During the period leading up to the legislation he was Vice-president of the Patronage de Lenfance and ‘Chairman of the Organizing Committee and the soul of the 1<sup>st</sup> Congress of International Tribunals for Children held in Paris from 29 June to 1 July 1911’.<sup>7</sup> A conference about juvenile courts which he organised in France was pivotal in the creation of a French system.

Maybe he met Miss E. P. Hughes when, in the winter of 1900-1901, she saw at first hand the probation systems in Boston and Chicago and elsewhere, and maybe they

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<sup>4</sup> The Times 1<sup>st</sup> may 1922.

<sup>5</sup> Her novel, *Transition*, was reviewed in the New York Times on 28<sup>th</sup> June 1914. The anonymous reviewer was not impressed and commented caustically, ‘But this is her first venture in the field of fiction. One cannot conscientiously advise her to make another.’

<sup>6</sup> [www.annales.org/archives/x/julheit.html](http://www.annales.org/archives/x/julheit.html)

<sup>7</sup> [www.annales.org/archives/x/julheit.html](http://www.annales.org/archives/x/julheit.html), page 5.

shared the same enlightenment and enthusiasm. Certainly, she was enthused enough to put pen to paper and write a book about the system (Vanstone 2007; Walton 1975). In particular, but perhaps more significantly she was impressed by the potential of specialist probation officers to change behaviour through a mixture of befriending relationships informed by a deep knowledge of human nature, flexibility of treatment, religiosity and humanitarianism. Whilst acknowledging the importance of cost effectiveness (being cheaper than prison), she used a Boston report to outline purposes of probation:

‘To protect society as far as possible by reformation [...] to surround the offender with influences which moralise his purposes and strengthen his power of self-control [...] is the latest word of science and of morality in regard to the duty of society towards unfortunate and degraded members.’

(Hughes 1903: 16)

Unsurprisingly, she recommended an experiment in London, Birmingham and Bristol in which educated probation officers personally motivated by religion, humanitarian impulses would be accountable to a judge and funded and trained by a philanthropic organisation (Bochel 1976; Hughes 1903).

Perhaps Lucy Re-Bartlett crossed their paths too in her stopover in Boston and Chicago, but she went also to New York, Philadelphia and Indianapolis and took particular note of the latter’s use of volunteers. (Mary Richmond of Social Casework fame described her as an English visitor who extolled the advantages of volunteer probation officers.)<sup>8</sup> Her 1905 report to the Howard Association entered the canon of influences that led to probation in Britain, but it is her influence in Italy that concerns us more here. Italy benefitted from her marriage to the Italian advocate Re which resulted in her bringing to Rome her ideas on the use of volunteer probation officers to supervise young boys. Her model, the foundation of which was education, involved conditional sentences coupled with surveillance by the *Council of Patrons*. Writers as far apart in time as Lemert (1986) and Trought (1927) support the view that she introduced probation to Italy: as the New York Times<sup>9</sup> put it:

What people regarded with indifference two years ago has now become one of the most important movements in Italy, all due to the initiative of an American (sic), Miss Lucy C Bartlett, who has taken up her quarters in Rome.

## Discussion

In these days of penal *inhumanitarianism*, it is hard to imagine people from such different disciplines bothering themselves with the subject of probation let alone forming part of the same reform movement. However, before stretching our imaginations too far and disassociating our champions altogether from the punitive populists of today, we should acknowledge what they have in common. The development of probation we should remember was driven as much by the concerns of elites about social order and the need for effective control (in modern parlance, governance) as those of reformers who worried about the harshness of the criminal justice system. Benignly intentioned it may have been, but inevitably through its history probation supervision has played its part in the governance of the poor and the

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<sup>8</sup> Richmond, M. E. (1906) ‘The retail method in Reform’, *International Journal of Ethics* 16, 2, 171-179.

<sup>9</sup> The New York Times August 23, 1908

implementation of state power over low level lawbreakers, and it is probable that Julhiet, Hughes and Re-Bartlett would have been as committed to those elements of community supervision as the recent succession of Home Secretaries in the United Kingdom. (I hesitate to include the rest of Europe in the comparison.) Moreover, enlightened they may have been, but they were not revolutionaries and their humanitarianism was as class-bound as other reformers of their day. Despite this, they would not have shared those Home Secretaries' vision of probation as punishment in the community or their enthusiasm for the social stigmatising of those people who offend; and they lived in a social environment and culture that differed in some important ways from the current punitive milieu.

What then was different about that environment of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries that drew these disparate interests together? Certainly, people who committed crime were as demonised, as much a cause of moral trepidation, as much a focus of moral outrage, and as much a threat to society as today (Cohen 1972; Pearson 1983). At least, that was true for some. It was true for the incorrigible, the habitual, the vicious, and the morally degenerate; but it was less true (and maybe not true at all) for the juvenile or the first timer or the *saveable*. Whereas today – in the United Kingdom at least - it seems that all people who offend are candidates for the parade through the streets in the back of the punitive bandwagon on its way to that unassailable cornerstone of the criminal justice system, the prison, in those times some of those who offended were as much candidates for social welfare as say, the mentally troubled, the homeless and the ill; and prison was deemed to be a corrosive and unfit place for *saveable souls* - as Hughes put it, society had a duty of care towards these individuals.

It is too simplistic to suggest that a duty of care to people who offend has disappeared from current criminal justice, and it would be insulting to those practitioners within the probation and prison services who provide help and guidance each day to those individuals. However, currently, the duty of care applies mainly after punishment has been applied whereas for Hughes and her like it was inherent in the sentencing process itself: moreover, a much broader swathe of people were eligible for inclusive treatment. At the beginning of the 21<sup>st</sup> century, society retains a sense of responsibility towards those who offend, but against the backdrop of the politicization of crime (Downes and Morgan 2002) and the influence of neo-liberal law and order policies (Tonry 2004) many more people are candidates for exclusion and separation in prison (Young, 1999). It was natural – and more acceptable - for our humanitarians to be concerned with the welfare of those who offended and the term 'do-gooding' had a less pejorative ring to it. Of course, exclusion and separation still applied and probation had the distinct appeal of being a system which could help the humanitarian elite distinguish between, and separate the deserving and undeserving: but it could qualify a significant number of people for the receipt of welfare and generic social work rather than punishment in the community, and it could do this essentially by removing them from the penal system and re-instating them with the parameters of social justice (with its different apparatus of governance and control). It was concerned with decisions about whether people were incorrigible or *saveable* whereas now it is concerned with the level of risk they represent (and whether it can be managed) and whether they are changeable and suitable for programmes of intervention. The current Service operates at the higher end of the risk scale, is perhaps more concerned with victims, and has minimised the dangers associated with

inappropriate intervention but the price has been an acceptance of a role in punishment and an acquaintance rather than friendship with social justice.

Our champions were, perhaps, more comfortable in their relationship with social justice as well as being united by an interest in social welfare as it might be applied at the lower end of the criminal justice scale, a philosophical bent for humanitarianism, and deeply embedded religious convictions. For them, creating probation was as respectable and potentially rewarding as building a hospital: and engineering, education and women's rights were equally important and recognised bricks in the edifice of social justice that they were happy to be simultaneously laying.

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