

Law and Government

THIRD DAY OF
THE CONFERENCE
REVIEWED BY

Bruno Lasker

THE purpose of the conference program to review the interrelation between social work and other great forces in the community that bear on social well-being, and thereby to enrich the thought and method of each, was splendidly realized in the sessions of the third day. Every one of the discussions turned on the cooperation between the machinery of law and social effort—not so much in congratulatory retrospect as in anticipation of a much richer and fuller variety of relationships between the two than now obtains. Dean Roscoe Pound, of the Harvard Law School, introduced the phrase “preventive justice” which means exactly that cooperation, just as preventive medicine has meant the cooperation between medicine and the innumerable agencies, public and private, in which today most of that effort is vested in so far as it is educational, industrial, or otherwise concerned with the lives of people in sickness and good health.

Here, for instance, was Frank O. Lowden, former governor of Illinois, reciting instance after instance of the contributions made during his administration by the social workers of his state in transforming the punitive, curative or merely segregative functions of the state government into means of rehabilitation, of readjustment, of prevention.

But how much remains to be done! Alfred Bettman, former special assistant to the attorney general of the United States, demanded that the prosecutor look upon himself as one of the social agencies of the city and that the social workers, so far from regarding the law as more or less antagonistic to the purposes of humanistic and preventive treatment of delinquency, should accept it as their own tool. Practically, he sketched the advantage of a close cooperation between prosecuting and social agencies whereby the former should be placed in a position to know of the history and background of the individual and the emphasis in crime prevention be swung over to the plague spots, to the social environment; whereby law officers would be educated to take as much interest in health and housing conditions, lack of proper recreation opportunities and the like as in the particular acts of crime with which they are called upon to deal. He said:

The newer and growing conception is that the offender rather than the offense is the thing to be studied and understood, and that the treatment be regulated more by the moral and mental make-up of the offender than by the nature of his offense. . . . The work of the prosecutor is today hampered by a confusing and badly defined mixture of old and new viewpoints.

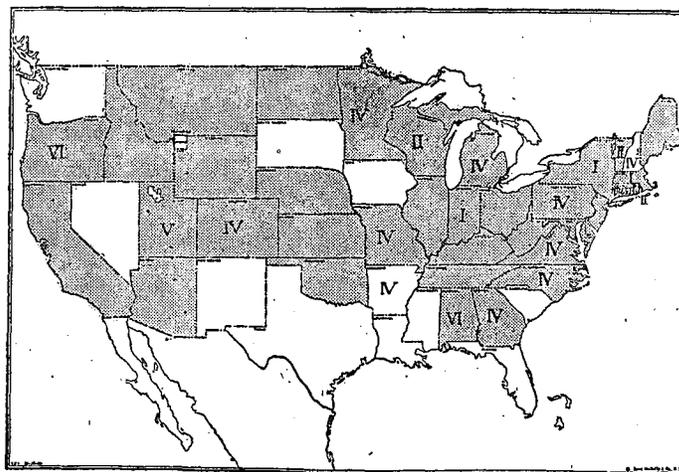
But the way out of this confusion, he added, is not contempt for law or the substitution of other for legal processes:

The ultimate sanction of all social work is and will remain the law. . . . The approach should not be along the line of the gradual elimination of criminal procedure, but rather along the line of the modernization of that procedure so as to enable that procedure to absorb and make use of all developments in the social sciences.

The necessary process of education is, thus, a double one: On the one hand, the law, now too often applied without regard to the individual circumstances of each case, must be modernized so that it can avail itself of modern science—especially psychology; and its officers must be trained in the recognition and use of social methods already at their command. On the other hand, social workers must learn to approach the law not as a hostile force, as an unbending structure which it is necessary to circumvent, but rather as an ally and a basic need if established standards of social conduct are to be maintained.

For instance, Robert W. Kelso, speaking of the “passing of the stone age in care and custody”—which, he admitted, was as yet an aspiration rather than a reality—showed how recent has been the development of psychology that has made possible individualization in the administration of justice and the revolution in the treatment of delinquents and defectives; how unreasonable it would be to expect the disappearance at one stroke of the whole conception of custody on which the thousands of institutions in the United States are based.

On the constructive side, several speakers showed how much has already been accomplished in making justice a concrete reality for all by applying the methods of social service to the relationship of the individual to the machinery of law. The sixty-eight legal aid societies of the country, for instance, now handle some two hundred thousand cases a year; parole and probation have been made safe for the community by the painstaking individualized cooperation of social agencies with the courts. In public health administration, not only the side of education, but also that of enforcement have gained immeasurably by the intelligent cooperation of social workers. Dr. Eugene R. Kelly, Mas-



Prepared by the National Probation Association
PROBATION LAWS

In the shaded states there is a probation law for adults as well as for juveniles (with the exception of Wyoming, which has a law for adults only); the white states have juvenile probation only. The Roman numerals indicate official state supervision of probation work by: I, state probation commission or department; II, state probation officer appointed by state board of charities or similar body; III, state probation association; IV, state board of charities or similar body; V, juvenile court commission; VI, child welfare department

sachusetts state commissioner of public health, expressed the opinion of many when he said:

It has become increasingly evident to the progressive health officer that achievement in public health administration and control can be reached only through the active cooperation of the individual citizen. . . . By a curiously tortuous path extending over a century in time, public health administration is coming back to a close relationship with the humanitarian aspect of the problems of life and death.

The unfavorable decisions of the United States Supreme Court on the child-labor and minimum wage laws obviously came in for much comment at these sessions. Dean Pound, in a masterly exposition that deserves the widest circulation, illuminated the historical foundation of the present seeming disharmony between the constitutional law of America and the desire for social progress. Fifty years ago, he said, even the pioneers of our modern social programs were talking in abstractions; pauperism, crime, disease were attacked where today we see the necessity of interesting ourselves in

the individual who is poor, delinquent or of ill health. Not so long ago, thinking men and women divided themselves on such questions as individualism and socialism, social rights and individual rights, economic and ethical laws. Today we recognize that law, politics, economics, sociology are not separate entities but continually interacting; none of them can be advanced without deep incursions into the domains of the others.

The science of law, he said—and this was perhaps the largest single contribution made during the day—can be brought into harmony with social need only by forgetting abstractions inherited from another century and substituting for them the study of the law's functioning. From being merely an instrument for the enforcement of social order, as it was in antiquity, or an instrument for maintaining the social status quo, as it was in the middle ages, or an instrument for the defense of individual right, as it has been since the Reformation, it is now recognized as

The Passing of the Stone Age

1842: From a Massachusetts Inspector's Report

THERMOMETER four degrees above zero. Visited the almshouse, neat and comfortable establishment; two insane women, one in the house associated with the family, the other "out of doors." . . . I asked to see the subject who was "out of doors"; and following the mistress of the house through the deep snow, shuddering and benumbed by the piercing cold, several hundred yards, we came in rear of the barn to a small building which might have afforded a degree of comfortable shelter, but it did not. About two-thirds of the interior was filled with wood and peat; the other third was divided into two parts, one about six feet square contained a cylinder stove, in which was no fire. . . . My companion uttered an exclamation at finding no fire and busied herself to light one. . . . Here was a woman caged and imprisoned without fire or clothes, not naked indeed, for one thin cotton garment partly covered her, and part of a blanket was gathered about her shoulders; there she stood, shivering in that dreary place, the grey locks falling in disorder about the face gave a wild expression to the pallid features; untended and comfortless, she might call aloud, none could hear; she might die, and there be none to close the eye.

1910: From Returns of a Federal Census

IT listed 5,408 benevolent institutions, nearly half of which were hospitals or infirmaries; one-fourth of which were child-caring homes and one-fifth homes for the aged and for children combined. These were exclusive of penal institutions. There were 92 county children's homes out of a total of 1,151 child-caring institutions; and these 1,151 institutions had 151,441 children under care. 84,198 persons, over half of them beyond fifty-five years of age, were being cared for in almshouses, and 88,313 a year were being admitted. In 1910, 1,314 convicts were entering our state and federal prisons and our county jails each day, while 1,264 were stepping out. January 1, 1910, 24,974 minors were inmates of juvenile reformatory institutions; and in addition there were in the unclassified jail and prison population noted above 911 persons under eighteen in state and federal prisons, 6,325 in county jails; 3,539 in municipal jails and lock-ups, and 1,141 in institutions for both adults and juveniles.

1923: Psychology, the Revolutionary

IT is only as we look backward that we perceive what a revolutionary change has been going on. Crudely named, that change has spelled the discovery and recognition of the human individuality. . . . Scientific knowledge of the human mind and the human body has so far developed that the extreme individuality of each one of us stands revealed. We differ in our intelligence, and the degree can be measured. We differ in our ability to carry responsibility. We differ in the degree to which we may exercise choice or free will in our conduct. We are all shades and degrees of mental soundness. . . .

What has the new understanding brought us? In the realms of the infirm, the dependent, the diseased and the defective it has spelled classification. For the citizen accused of crime it has brought a recognition of varying degrees of ability to carry the responsibilities of citizenship. And for the wretched pal who has been convicted it has worked that same intelligent classification according to his ability to respond.

The castellated orphanage will persist long years after we are dead, because man applies newly-acquired knowledge slowly. . . . But the knowledge which man gains about himself abides. It is but a question of a few years now when every orphanage in the land will be no more than a temporary shelter and its inmates will be placed in foster homes. . . . Today insanity is recognized as frequently curable. The hospital no longer waits like a yawning abyss to swallow the tragic dement: it reaches out into the community and welcomes the citizen who is mentally troubled till he fears a catastrophe—it receives him as a voluntary patient and treats him for mental sickness. . . . Protect society from the lawless acts of the individual who has broken its rules, says the modern democracy, but salvage the man if you can, turning him back to ordinary life when he is likely to be able to get along. . . . Individualization in law and in our social service practice will certainly destroy the frowning battlements of penology, and in like manner it will destroy—it is destroying—the unclassified almshouse. . . . Though we are early upon the scene, we are witnessing the passing of the stone age in care and custody.

From the paper of ROBERT W. KELSO

an instrument of social engineering—one of many means for regulating the conduct of politically organized society. We must free ourselves, he declared, from the metaphysical conceptions of the law that we have inherited and reconsider it functionally, abolishing those barriers that are in the way of the exercise of social responsibility, strengthening the preventive elements which so far exist only in their rudiments. He was not optimistic as to the ease with which such a change might be effected; but like other speakers he found promise in the growing team-play between many social agencies of which the courts and administrative organisms of the law are among the most important though as yet the least affected by modern thought.

Preventive Justice

WHERE we take into account that in the battle against crime, as in every other form of social welfare work, prevention is more important than cure, we will then see that every criminal prosecution is not merely the ascertainment of the offense which has been committed and the identification of the offender, but that it is also a problem of ascertaining, first, the best treatment of the offender from the point of view of destroying or reducing his future danger to society and, secondly, drawing the lessons to be learned from the history of the offender as to the social causes of crime in the community.

ALFRED BETTMAN

MODERN science of law looks at loyal institutions and rules and doctrines functionally. It does not inquire about their abstract justice. It investigates their concrete workings. Hence it teaches us to put our faith more and more in individualized treatment of actual cases and in prevention, and less and less in abstract general formulas and punishment or redress after the event. It thinks of law as but part of a great process of social engineering.

ROSCOE POUND

IF substantial justice is not rendered the immigrant through the courts, or if he believes that justice is not done him, he is acquiring unfavorable ideas of our courts, our law, our government, of the state itself. The courts the immigrant comes in contact with the most are the lower courts, and some of them have treated him very badly and are still doing so. . . . The modern court is beginning to recognize that it is necessary to understand the client himself as well as to know his acts. Judges should consider knowledge of the characteristics of their immigrant clients as important as knowledge of the law they administer. Social agencies assisting immigrants in their contacts with the law should definitely provide for understanding the client as well as the case.

KATE HOLLADAY CLAGHORN

THERE is a denial of justice to persons in this country, not because of our laws which, in fact, are extremely just, nor on account of the judges, who are the most honorable group of our public servants. The problem lies in devising modern machinery to bring the laws out of the books and home to the people in our great urban communities. The denial of justice is felt by the poor of this country—not the social wrecks but the ordinary workingman of modest means—because of the expense of court costs, the delay of court procedure and the need for and expense of a lawyer. If a man cannot afford the money or the time to carry through a case at law, according to the existing methods, he may be left completely outside of the law.

JOHN S. BRADWAY

The Church

FOURTH DAY OF
THE CONFERENCE
REVIEWED BY

Graham Taylor

ONLY once before in all these fifty years of the conference proceedings has the church had its day in this higher court of common pleas. But it was no such day as this Sunday. What happened was no happening at all. Everything that occurred bore evidence of careful forethought long beforehand by the chairman of this section, Mrs. John M. Glenn, and her associates. Nothing was left haphazard. Large liberty and incentive for spontaneous expression met with quick and full response. The single purpose of the program took up all the slack in the time available. As stated by the president of the conference this purpose was "to think together of the part that personal religion must play if there is to be progress through social work."

To this end a most tactful beginning was made in arranging for the morning church services. Instead of having a service, preacher and sermon of its own, as hitherto, the conference transferred the center of its gravity to as many churches of all denominations as welcomed its representatives to their pulpits and Sunday schools. The theme set for all of them was Personal Religion and Progress Through Social Work. Thus common ground was found and well occupied in accord with the distinctive types of personal religion set by Catholic, Jewish and Protestant churches. Yet the appeal to these various types was coordinated by the single emphasis everywhere placed upon social work as the means through which the promotion of religious progress was being considered.

Preparatory to this attempt to bring to the youth of the church interest and incentive in the service of their own local communities, some simple words of suggestion were sent to teachers of young people, and to the young people themselves a story-like description of the Twentieth Century Good Samaritan, in the hope that their attention and inquiry might subsequently be attracted towards the social work needing to be done, or under way, in their own localities. This effort should impress upon all adult social and religious workers the opportunity and obligation to start earlier to recruit not only leaders but the rank and file as well, both of whom must be vastly augmented if the hope of social and religious progress is ever to be realized.

The four noon lunch conferences were designed to lay down the lines along which progress is to be made, and they actually registered many way-marks of the progress already attained, largely through religious cooperation with social work. Three of these conferences were free floor discussions on such questions as: How the church may relate itself to the social work of the community; How, from the standpoint of the rural community, social work under church or