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Social Aspects of Minneapolis Courts

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WHAT do I mean by “social aspects”? I am willing to let the reader make the definition. If he will tell me what is social work, who is a social worker, what is social legislation, what a social institution, I will use his terminology to define my topic. We know well enough what is meant by each of these familiar though rather elusive terms, but attempts at defining any of them have not been wholly satisfactory. And yet a lawyer addressing lawyers ought to have a clear enough idea of what he is writing about to risk a definition.

From time immemorial the prevailing aim, method and product of the courts have been highly individualistic. When one thinks of a civil action the concept is naturally of a controversy between A and B as to their respective rights and obligations. Cases are rare in which the community is a party or has any interest in the result other than a general concern that justice shall be done. While in criminal proceedings society is seeking to protect itself, the obvious issue is usually the punishment of C for an offense against the person or property of D. Speaking generally the social status and relationships of A and B, and of C except as an alleged foe of the social order, have been ignored. In court they stand as individuals isolated from everything that is not relevant to the matters in dispute.

In other departments of organized society status and relationships count for much. In their light individuals are appraised

*Judge District Court, Minneapolis.
and dealt with and community obligations measured. Few fail to see that the community is so knit together that the welfare of each intimately involves the welfare of all. The courts have not been strangers to this conception. I think it can be traced—though such is not my present purpose—from the early assumption by chancery of the authority and duty of the sovereign as parens patriae, ultimate guardian of all who by reason of infancy or incompetency were not able to care properly for themselves. The growth within the courts of this idea of social interest and obligation, manifesting itself through changes in organization and procedure, is what I understand by the phrase "socialization of the courts," the use of which has spread from philanthropic and academic to legal circles. That such a process is going on is undeniable. Whether it is for good or ill I shall not here discuss. Its purpose is to adapt judicial machinery more closely to the varied needs of the community; its method sometimes involves new forms of organization, sometimes new procedure, sometimes the assumption of functions which are administrative rather than judicial, and which seem to many unwise departures from traditional standards. Such organization and method constitute the social aspects of courts, local manifestations of which it is my aim in this paper to point out.

We find a beginning in a sort of rudimentary probation system that prevailed in the municipal court at least twenty-five years ago. In the criminal branch there were many petty offenders whom to punish by fine or imprisonment was an evident social waste and likely to be a serious hardship to innocent persons. Accordingly the judges devised a plan, then thought to be of doubtful legality, but good so long as nobody questioned it, of staying the execution of sentence during good behavior, and presently suspending or annulling it altogether if the conduct of the offender proved satisfactory. There was no supervision, "good behavior" merely meant keeping out of court. In 1899 a probation officer was provided by law for the supervision of minors with whom the court thus dealt for their correction rather than punishment. In 1905 a juvenile court was established as a branch of the district court. This was a fundamental departure in judicial organization. It was in essence and in its

1Chapter 154, Laws 1899.
2Chapter 285, Laws 1905.
development has more and more shown itself to be a socialized court. Indeed, so much do its administrative overshadow its judicial functions that it is in fact more truly a social institution than a court of the traditional sort.

About 1905 adult probation began to be enlarged and developed in the municipal court. In 1907 it was expressly recognized by law and a probation officer provided for adults. In 1909 adult probation in the district court was established, with equipment for supervision. There was an almost continuous enlargement of the functions of the juvenile court, which took on physical and mental adjustments of delinquents about 1911, and "mothers’ pensions"—so called—in 1913. In 1917 it was charged with new duties by the revised "children's laws," while its constituency was increased (effective in 1918) through the addition of the eighteenth year to the age of legal juvenility.

In 1917 another socialized court was established by an amendment of the Minneapolis Municipal Court Act—the court of conciliation and small claims. The same year saw provision in Hennepin County for that modern and humane agency for the protection of poor persons charged with crime, the public defender. And all along there has been an increasing co-operation between the courts and social agencies, public and private, whereby the agencies have resorted more and more to the courts for aid in solving their difficult problems, and the courts have called increasingly upon the agencies for investigation, adjustment and supervision in appropriate cases.

This bird’s-eye view of the progress of the socializing tendency in Minneapolis courts brings us to a consideration of the present status. I shall discuss somewhat more in detail adult probation, the juvenile and conciliation courts and the public defender.

The probationary method is an outgrowth of changes in society’s attitude toward convicted violators of criminal laws. Gradually it came to be realized that the best protection of the community against anti-social conduct lies in reformation, when possible, rather than retribution. With the first step in the new

*Chapter 391, Laws 1909.
*Chapter 130, Laws 1913.
*Chapter 397, Laws 1917.
*Chapter 263, Laws 1917.
*Chapter 496, Laws 1917.
order, the reformatory prison, came the parole system, liberation upon good behavior before the expiration of sentence. Thus granting to the offender the opportunity to avoid part of his penalty by good conduct after release from prison walls easily suggested the next step,—a chance to escape judicial punishment altogether by showing throughout a limited period of surveillance such amendment of purpose and life as should give promise of future obedience to law. This is probation. Plainly it is a method not to be applied without wise discrimination. With the hardened and inveterate offender it would be worse than folly. It is predicated upon desire to reform and capacity for reformation. Naturally it was first tried with juveniles,—a judicial adaptation of an expedient familiar in home and school. In its application to adults Massachusetts led the way more than forty years ago. But it was not until the first juvenile court, organized in Chicago in 1899, had magnified probation for delinquent children and demonstrated its possibilities, that the method was rapidly extended to adults.

In Minneapolis misdeemans are tried in the municipal court. Before and since prohibition a large proportion of these have been cases of drunkenness; many others, non-support, commonly traceable more or less directly to the liquor traffic. While municipal court probation has not been confined to offenders of those two sorts, they have always comprised the majority of subjects. The method is to impose a workhouse sentence, stay its execution for a definite time upon appropriate conditions, and place the case under the care of the probation officer. Fortunately this officer has been a man of remarkable qualifications, and the results of his work have been worthy of more publicity than they have received. His reports show 10,446 probationers during the fifteen years ending with 1921. Of these 7813 (74.8%) made good and were honorably discharged; 1745 (16.7%) violated the terms of their probation and were committed to the workhouse, while the remaining 888 were still under supervision at the end of 1921. Not to speak of other considerations, there is evident economic significance in saving an average of 521 persons per year, many of them heads of families, from wasteful and degrading imprisonment.

In 1921 the probationers numbered 1487, of whom 510 were honorably discharged and 89 committed. It may be interesting to
note in passing that during the first six months of 1919, before prohibition, there were 322 placed on probation for drunkenness; during the last six months of 1921, 237.

In non-support cases and other cases where the husband has failed to provide for his family an order of court is often made for the collection of wages by the probation officer or the wife, to be expended under supervision. The sum handled thus in 1921 was $60,955.55. During the year four probationers bought homes on monthly payments. Thirteen others started bank accounts and at the end of the year had on deposit $1,030.22. There seems to be a reflection of economic conditions in the comparison with 1919, when the corresponding figures were eighteen, nineteen and $2,292.60. Through the efforts of the probation officer seventeen men and four women who in previous years were unable to hold any employment procured relatively permanent positions. In thirty-four cases reconciliations were effected between husbands and wives who came into court estranged and separated.

Probation in the district court is also effective though less striking in its reported results. Here the offenses are more serious, being either felonies or gross misdemeanors, and the offenders as a class less amenable to constructive treatment. Summarized figures for 1921 are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>January 1, 1921</th>
<th>During the year</th>
</tr>
</thead>
<tbody>
<tr>
<td>On probation January 1, 1921</td>
<td>146</td>
<td>343</td>
</tr>
<tr>
<td>Placed on probation during the year</td>
<td>197</td>
<td></td>
</tr>
<tr>
<td>Discharged during the year</td>
<td>116 (33.6%)</td>
<td></td>
</tr>
<tr>
<td>Committed during the year</td>
<td>59 (17%)</td>
<td>175</td>
</tr>
<tr>
<td>On probation January 1, 1922</td>
<td></td>
<td>168</td>
</tr>
</tbody>
</table>

The number placed on probation was about one-eighth of the criminal cases disposed of. Collections were $6,737, ninety per cent. for family support, the remainder for restitution. No use has been made of the district court probation officer for the enforcement of alimony in divorce cases.

In the municipal court the probation officer has one assistant. In the district court there is but a single officer for adults. Probation for women has not yet been satisfactorily organized in either court. Until within the last two or three years there have not been cases enough to warrant a full time woman officer. As a rule the regular officer of the court is used; sometimes a friendly woman on whom the judge has felt at liberty to call. The number of women on probation at a given time has been small in the
district court. In the municipal court, however, there were one hundred and twenty-five on January 1, 1922. This number is now fairly constant and seems to indicate that a woman officer is needed. A woman of the requisite qualifications would be of great assistance in non-support cases, where the incompetence and wastefulness of the wife is often the occasion, if not an excuse, for the husband's delinquency.

The juvenile court is, as has been stated, a branch of the district court. Under the law a judge must be assigned for at least a year's service, whose first duty it is to do the work of this court, his other time being available for the trial of cases from the regular district court calendar. Apparently the assignment is not considered by the bench to be a very desirable one, and any judge who is willing to keep it indefinitely may do so. The first judge was in charge six years; his successor somewhat more than ten. The third is now in his first year of service. His schedule is two days per week in the juvenile court and three and one-half days on the regular district court calendar. Much administrative work must be done outside of court hours. There is a staff of nineteen persons, including clerk, reporter, bailiff, probation officers, nurse, investigators of county allowances ("mothers' pensions") and office assistants, all on full time; also two physicians, dentist and psychologist on part time. Two correctional schools for delinquents are managed jointly by the judge and county commissioners,—one for boys and the other for girls. The Glen Lake School for Boys is a farm of about one hundred and sixty acres owned by the county, with three cottages capable of accommodating about fifty boys, school house and other appropriate buildings and equipment. A superintendent, matron and eight helpers conduct this school, besides two teachers furnished until recently by the Minneapolis Board of Education, but now paid by the county. The Home School for Girls on Penn Avenue North is a rented place, ten acres, with two houses, barn, etc. The staff consists of a superintendent and four helpers, besides a teacher. Twenty girls can be cared for.

There were 798 new cases of delinquency in the juvenile court during 1921,—154 girls and 644 boys. About half were placed on probation; the others disposed of in various ways. The totals given omit a large number of cases disposed of by the chief probation officer for juveniles without formal hearing before the judge.
Much of the time of the court is taken up with cases of dependency and neglect. In new cases of this sort during 1921, there were 339 children who were cared for in various ways. Here the work of investigation and supervision is done by agencies outside the probation office,—chiefly by the Children's Protective Society and the County Child Welfare Board.

The system of county allowances to mothers or “mothers' pensions” is a modern device to keep children of worthy but destitute mothers in their homes under wholesome living conditions,—not as charity but, like public education, for the ultimate good of the state. The details of the administration of the law are too complicated for summary explanation. The net result, in spite of the obvious dangers, has been good. At the end of 1921 there were in the county 216 mothers drawing allowances on account of 793 children. All of these cases had been either originally adjudicated or reconsidered during the year, besides many others in which the allowances had not yet been granted when the year closed, or had been discontinued. The amount dispensed was $92,857.96. In 1920 it was $90,195.53; the estimated amount for 1922 is $100,000.

Nearly all cases of whatever sort are kept on the calendar of the court for periods ranging from six months to several years. The agents of the court are constantly in touch with them, and they come repeatedly before the judge for action according to the kaleidoscopic changes in individual conduct or family conditions.

This glimpse of the juvenile court is designed to give some impression of the nature and volume of its work. Concerning its methods there is not space to speak. Its spirit and purposes probably need no explanation to readers of the Minnesota Law Review. It is not a piece of legal mechanism, grinding out its product according to rules and precedents; but an organization for human contact, equipped, to be sure, with judicial power, but working with freedom, adaptability and constructive helpfulness,—a truly social enterprise.

The Minneapolis court of conciliation and small claims was established by the legislature in 1917 as a branch of the municipal court. The judge is elected under a special designation, but has all the powers of the other municipal judges. In actual practice, however, he performed no duties outside the conciliation branch until quite recently, when there were added to his
functions, by agreement among the municipal judges, the disposition of cases under the traffic ordinances; and in vacation he now assists in the criminal branch.

The original bill for the establishment of the court was proposed by the State Bar Association and modeled upon the Norwegian system of conciliation. It provided for: (1) voluntary application for the good offices of the court to effect conciliation in disputes within the jurisdiction of the municipal court. (2) Compulsory application for conciliation in controversies involving not more than $100. If the parties could not be brought to an agreement the case was to be dismissed without prejudice to the right of the plaintiff to bring suit in regular form. Without the application, however, an action could not be brought. (3) Optional application to the court for trial in informal and summary fashion of disputes involving not more than $50.

In the legislature the compulsory features of the bill were eliminated, so that the act as passed established a small claims court rather than a true conciliation court. As such, however, it performs a highly useful function.

Several years ago the present Chief Justice of the United States said in a noteworthy address before the Bar Association of Virginia:

"Of all the questions which are before the American people I regard no one as more important than the improvement of the administration of justice. We must make it so that the poor man will have as nearly as possible an equal opportunity in litigation with the rich man; and under present conditions, ashamed as we may be of it, this is not the fact."

The criticism was just and is still only too well merited; but courts like the one now under consideration go far to lighten the reproach. There are no lawyers, no formal pleadings, no costs. In watching the proceedings one thinks of two quarreling school-children, coming to a sensible and kindly teacher to have their mutual grievances adjusted. Though the amounts involved are small they are often of much importance to those concerned; and the fact that there is a tribunal where small claims can be enforced means much to those whose rights would be sacrificed if the alternative were the expense and delay of an ordinary lawsuit. About twenty-five per cent. of the cases are wage claims, and all cases are promptly disposed of.
A summary of the court's work covering its first four years, August, 1917, to August, 1921, shows:

- Total number of cases handled: 21,264
- Settled before hearing: 4,983
- Settled in court: 2,146
- Tried in court: 15,581

(The discrepancy in totals arises from duplication in the record of settlements).

There is a cheap and easy appeal, but only 209 persons have taken advantage of it.

The court has been twice discussed in the Minnesota Law Review by former Dean W. R. Vance, the earlier article dealing with the court as proposed, with true conciliation features, and the later one describing its operation as actually established and doing business. The constitutionality of the act creating the court was recently considered by the Minnesota Supreme Court and sustained except in a detail relating to appeals. In the opinion (Dibell, J.) the spirit of the court is admirably interpreted as follows:

"The theory, from a conciliation standpoint, is that many disputes may be amicably settled if the parties are brought together, face to face, before an unprejudiced and sympathetic judge, who will painstakingly inform them of their rights under the law, suggest what may be done, and tactfully help them to an amicable ending of their controversy. The theory from the standpoint of a small debtors' court is that litigation by the common-law method over small claims is wasteful, and fails to bring practical justice because of an expense out of proportion to the amounts involved, the time of the parties consumed in the litigation when they should be engaged otherwise, and the attendant delay in reaching a result."

The public defender represents another modification of court procedure in the direction of justice for the poor. It has long been the law in Minnesota that when a person accused of a felony or gross misdemeanor is unable by reason of poverty to procure counsel, the court shall appoint to appear in his behalf a lawyer who is paid out of funds of the county. The compensation is small and competent lawyers are not always available for appointment. The result has been that defendants in criminal cases who have not been able to select their own legal advisers have often

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2 Flour City Fuel & Transfer Co. v. Young, (1921) 185 N. W. 934; 6 Minnesota Law Review 161.
been represented in court by inexperienced or incompetent counsel. It must be confessed that judges have sometimes been too careless and complaisant, appointing men who had little business and whose very presence in the court-room, waiting for crumbs from the professional table, was evidence of unfitness. But even when carefully administered the old system had inherent disadvantages. To remedy these evils there has been tried in a number of progressive cities, during the last dozen years, the experiment of providing for the defense of indigent persons accused of crime by a public official, selected for fitness and paid a fixed compensation. Hennepin County has been the only Minnesota community to adopt the innovation. Four years of experience seem to justify it, and it is likely to extend before long to the other populous counties of the state. Defendants are not the only gainers. Doubtless considerable expense is saved to the county by the entry of pleas of guilty in many cases where a lawyer less capable and conscientious than the public defender, with fees contingent upon the numbers of days spent in court, would have wasted time and public funds in useless trials.

Some idea of the work of the public defender may be drawn from the figures for 1921. There were referred to him 320 cases, about one-sixth of the total number of criminal cases pending in the district court during the year, and more than one-fifth of the cases disposed of. Of these fourteen employed other counsel after the reference, 245 pleaded guilty either to the crime charged in the indictment or to a lesser degree, twenty-four were acquitted and sixteen convicted on trial. Indictments nolled or cases dismissed numbered twenty-one. Total figures for the four year period are as follows:

| Cases referred................. | 793 |
| Pleas of guilty................ | 585 |
| Convictions.................... | 57  |
| Acquittals ...................... | 42  |
| Indictments nolled and cases dismissed... | 62 |
| Private counsel retained......... | 27  |

A discussion of our subject would be incomplete without further reference to the remarkable increase, during recent years, in the use by the courts of social agencies, private and public. In Minneapolis the efficient “attendance department” of the public schools aids in the administration of child-labor and school-at-
tendance laws; several active organizations cooperate in the prevention and correction of juvenile delinquency, dependency and neglect; non-support cases and cases of abandonment of children present distinctly social problems, and courts have learned that social workers can here give aid in all constructive efforts. The State Children's Bureau and County Child Welfare Board work intimately with the district court to safeguard children born out of wedlock and those proposed for adoption in foster homes. From the same sources valuable aid is rendered the probate court in dealing with the feeble-minded, and sometimes the insane. Occasionally a perplexed district judge calls upon juvenile probation officers, or upon some unofficial agency, for aid in the disposition of children involved in actions for divorce. But no regularly organized assistance is available in this field,—much to the detriment of the children and ultimately of the community in which they grow up and live. This obvious need, together with the pitiful inefficiency of district court methods for collecting alimony, in contrast with the success of the municipal court in non-support cases, furnishes a strong argument to the proponents of a court of domestic relations or "family court."

Naturally the large cities of the state have been the experimental ground for innovations of the sort we have considered. The original juvenile probation act of 1899 related only to Hennepin, Ramsey and St. Louis Counties, containing the cities of Minneapolis, St. Paul and Duluth. The same is true of the juvenile court act of 1905, extension to rural counties being initiated in 1909 but not made fully effective until 1917. In form the adult probation law of 1909 was of general application throughout the state, but outside the cities named the courts were slow to act under it; and the same is true of the first "mothers’ pension" law, passed in 1913. As we have seen, provision for a "public defender" has been limited to Hennepin County. The original act establishing a court of conciliation and small claims was limited to Minneapolis. Substantially similar courts were created for Stillwater in 1919 and for St. Paul in 1921. Chapter 317, Laws 1921, authorizes the governing body of any city to engraft upon its municipal court the same procedure prescribed for Minneapolis.

\[\text{Chapter } 232, \text{ Laws } 1909.\]
\[\text{Chapter } 397, \text{ Laws } 1917.\]
\[\text{Chapter } 112, \text{ Laws } 1919.\]
\[\text{Chapter } 525, \text{ Laws } 1921.\]
in 1917. A bill was introduced in the legislative session of 1921 providing for compulsory conciliation proceedings, without the intervention of lawyers, in controversies involving less than $1,000. Since it did not apply to Minneapolis, St. Paul or Duluth its failure to make headway can hardly be charged to the city lawyers. Indeed, the Minneapolis bar has been notably open-minded toward projects designed to bring the courts into closer touch with the changing conditions of our complex social order.