

Third Section
First Question
Abstract

Suspended Sentence.

By Robert Jacobsen, Advocate of the Supreme Court,
Christia nia.

Suspended sentence was introduced into Norway in 1894 .
. It applies ^{to} ~~for~~ cases of fines or short sentences , sentences that would mean six months in the house of detention , or three months of imprisonment . The court takes into consideration the nature and ~~g~~ gravity of the crime, the circumstances under which it was committed, the age of the offender, his previous record etc. If it is some time since the crime was committed it is ascertained whether the accused has made reparation, so far as was possible, or showed penitence .

If the person whose sentence was suspended commits crime within three years and is convicted and sentenced the execution of the suspended sentence also goes into effect. If it was an intentional crime , or if the accused has some other sentence than imprisonment , the court will decide whether the first sentence may still be suspended.

When sentence is suspended the judge will at the same time admonish the accused and if he is under 21 will exhort him as he has opportunity. . Conditional sentences are subject to appeal. .

One of the objects in adopting this method was to avoid the harm that comes from imprisonments for short periods, which are demoralizing . By a conditional sentence the criminal is spared the sojourn in prison, and if for three years he abstains from committing crime it becomes a powerful stimulant to keep

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One of the objects in adopting this method was to avoid the harm that comes from imprisonment for short periods, which are demoralizing. By a conditional sentence the criminal is spared the sojourn in prison, and if for three years he abstains from committing crime it becomes a powerful stimulant to keep

in the right path. That is the side which is of the greatest interest.

Norway has statistics to show the results of this method since it went into operation. From the tables we find that the half of those convicted between the ages of 14 and 18 (14 being the age of criminal responsibility) were conditionally sentenced . Of those above ^{eighteen} ~~18~~ 11.8 per cent were conditionally sentenced in 1907. . The sentence was applied more frequently to women than to men .

As to the effects of conditional sentences data can be given only of those pronounced from 1903 to 190⁵. During those years 1152 persons were so sentenced . Out of that number 4 died, one was pardoned , twenty failed to make promised reparation and 201 were again under arrest and reconvicted. . But a little over 80 per cent came out successfully during those three years. Some have fallen since then, but it is safe to say that among all who have been under the suspended sentence not more than ten per cent have become recidivists. . Though these statistics cover only a few years and it is but ^{five} ~~ten~~ years since the law has been in force, ^{they} ~~it~~ would seem to show that conditional condemnation is an efficacious method of preventing crime.

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The Effects of Modern Penal Legislation.

By Amedee Mourral, Member of the Prison Society of
France.

The law of March 26, 1891, better known as the law of Berenger, was designed to combat recidivism . . . It allowed ^{in certain cases,} suspension of sentence for five years and it organized more severe repression for recidivists. This law was received by the courts at first with certain reserve, but ^{afterward} it extended rapidly ~~later~~. It is difficult to state the exact effects of the law, as the statistics do not give the precise relations between the number of sentences suspended and the revocations. In the district of Rouen ~~during the five years preceding 1903~~ at the expiration of the five years of probation, out of 3263 persons who had been conditionally sentenced a little more than twenty per cent had had their suspended sentence revoked, a considerably larger number of men than of women having ~~been~~ had their sentences revoked. Minors up to the age of 18 made up nearly half of the revocations, and from that age up to 40 there was ^{a lessening of the number} ~~descending progression~~, showing that it is when a man is in his prime, intellectually and physically, that the suspended sentence is of most effect.. Revocations for slight offences were rare.. These figures are not of absolute value, but they are suggestive. .

If the law is indulgent towards []]first offenders it is much more rigorous for the recidivist. It was plain that if the judge was allowed to be lenient to a person condemned for a first offence, which perhaps might have been accidental, he was the more bound to be severe towards those who were deaf to warnings..

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But it must be confessed that the courts which rapidly appropriated the generous ideas of the first part of the law seem to have quite forgotten the latter part of it. As a proof of this one has but to consult the statistics on recidivism. These will show that the intentions of the legislators have not been carried out. The proportion of recidivists appearing several times a year before the same court, in Rouen, for instance, is identically the same as in 1891, before the passage of the law. . One may say that that part of the law is a dead letter. It has not produced the results hoped for by its author.

Since 1885 we have also had conditional liberation, such as exists in several other countries, and in the United States. That springs from the same generous ideas as the Berenger law, but it differs from it in being a recompense for good endeavors. We have no reports as to the results of this law.

For minors special provision is made. The age of penal majority has been raised to 18 and there are committees to look after juvenile criminals; guardian societies, conditional liberation from reform schools, etc. As statistics are silent as to the age of recidivists it is impossible to say how many of them are minors.

Neither the law of the suspended sentence nor of conditional liberation appears to have had much influence on criminality in France. Doubtless these two laws are excellent in principle and they have ameliorated our penal system, but they ought to be applied with discretion and only to those persons who are worthy of their benefits. But as a corollary severe repression of recidivism is necessary. Suspended sentence should not be applied to sentences to fines. Conditional release should always be accompanied by careful oversight of those released and those who have been sentenced several times ought not to have its benefits..

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Conditional Sentences.

By Mr . Brück-Faber, Manager of the
Penitentiary Establishments of Luxembourg.

I have the honor to present the following propositions.

1. Conditional sentences constitute a penal reform whose usefulness has been confirmed by practice.

2. The period ~~which~~ in which a previous sentence may deprive one of the benefit of a suspended sentence should be limited, to five years , for example .

3. Penalties incurred during ~~the~~ probation , if they do not entail the recall of the suspended sentence , should increase the period of probation from one to three years.

4. There should be a general exchange of reports of sentences, with the object of securing international control of the period of probation.

5. The benefit of the suspended sentence should be extended to traveling foreigners .

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Third Section

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First Offenders and Probation.

By A. Stoppato , Professor of
Penal Law, University of Bologna.
a

The program of questions demands not the statement of principles, but the results obtained in different countries, of the application of legislative measures for first offenders. Statistics alone cannot give these results. Though ~~admitting the accuracy of data~~ ^{the data may be accurate} acknowledge there must be in addition an investigation of a moral and sociological nature. ^{a consideration of} I shall confine myself to the character of conditional liberation and the manner in which it has been regulated and applied in Italy , with some considerations of a general character.

The evolution of the idea of penalty has not yet reached the last limit of progress , but it is approaching it by the acceptance by legislation of principles, like that of conditional liberation, which confirm anew the principle maintained by Cesar Beccaria ~~that the right of the state to punish~~ the essence of the penal system should be placed within the limits of a legitimate defense and that one of the checks to crime should not be the cruelty of punishment, but its certain application. .

The principle that punishment in its application should look to the moral improvement of the culprit is of social importance and the mitigation of penalties for certain offenders and making it sharper for habitual criminals , is a truly social duty . It is certain, long experience has demonstrated it, that short sentences , applied without distinction to juvenile delinquents and first offenders , for certain kinds of misdemeanors , have not always produced good results either as measures of prevention or repression. As preventive measures they fail to deter from crime because they do

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The evolution of the idea of penalty has not yet reached the last limit of progress, but it is approaching it by the acceptance by legislation of principles, like that of conditional liberation, which generally answer the principle maintained by Cesare Beccaria that the weight of the penalty must be the essence of the penal system should be placed within the limits of a legitimate defense and that one of the tasks to crime should not be the cruelty of punishment, but the certain application.

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not take away the hope of escaping with impunity, which is the great incentive to wrong-doing. As repressive measures they do not impress the one who submits to them in such a way that he is more disposed to yield to social requirements. . . A law has only a theoretic value unless it is for social advantage.

The problem may be divided into two parts. On one side, that which concerns juvenile offenders, the victory seems won for the principle that in dealing with them it is not a question of a true penalty, but the measures of discipline, and education through the intervention of special courts, ~~establishments~~ ^{beneficent} and institutions of social and ~~charitable~~ character. It is to be desired that there should be an even wider substitution of educative for repressive measures for these cases. The triumph of modern social ideas will be reached when the day comes when minors shall be entirely exempt from the action of penal codes and brought under ^a ~~the~~ regime which shall have no appearance of punishment. For minors I believe we should not speak of conditional sentences, but that the efforts of legislators and philanthropists should be concentrated in securing "extra penale" methods, - purely and simply educative.

As to first offenders, or delinquents who are not first offenders, who by their character, their antecedents and the nature of their crimes awaken no grave apprehension, the attitude of the public toward them should be different. For these in particular reformatory methods are suitable and should be applied according to the different traditions and customs of different countries. There are offenders who may be called criminals of passion, and of occasion, for whom the short sentence may prove effective, especially as a deterrent. In these cases the punishment is personal, if I may so express myself, rather than social. Here the idea of chastisement is

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Stoppato 3

~~the~~ of the first importance . But if crime can be prevented without personal suffering that is sufficient, provided the ends of society are met . A principle is just in so far as it is actually necessary.

The human application of penalties is necessarily imperfect and for some cases absolutely dangerous , because it is practically difficult, not to say impossible, to so distribute penalties that they are adapted to each particular individual. Now if the conditional sentence is opportunely applied the feeling of justice and social beneficence which inspire it produce a feeling of gratitude and a feeling of solidarity between the criminal and society. That is ~~the~~ great benefit which may be derived from it , but it must be applied with prudence and humanity , sinning neither by too little or too much. . The social task of the judge is a delicate one. He must be a jurist to determine the objective elements; ~~and~~ a psychologist to ~~sp~~ ^{appreciate} ~~the~~ the subjective conditions and a sociologist to have them conform to the environment.

The Italian law of 1904 did not accept the system of the suspension of sentence which was accepted by the legislatures of America, Australia, England and the canton of Neuchatel, but it accpete delay in the execution of the sentence after judgment that of ~~conditional sentence release~~, ~~already accepted by the law~~ which has been passed, which has been accepted in various European countries, Belgium, France, Portugal, Norway , etc.

In pronouncing the sentence the judge announces the ~~delay~~ period during which the execution of the sentence may be suspended. The delay may not be less than that prescribed in the sentence nor more than five years.

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Stoppato 4

This then is the Italian law, ~~which is~~ which does not differ essentially from others of its type. I think that in Italy, at this juncture and with the ^{present} conditions of criminality, ~~that~~ it would be imprudent to apply the more accentuated system of suspension of sentence except for juvenile delinquents. ^{For} ~~In~~ the class of criminals in our population it would be very dangerous and would be especially difficult because it requires a "probation system" for which at present there is no ~~xx~~ suitable organization ^{and no} ~~max~~ individual initiative.

(Tables follow giving the statistics, for three years, of the number of criminals who have had the benefit of a conditional sentence, about 26 per cent in 1908, a number called by the writer "vraiment excessive". There are also tables giving the crimes for which the conditional sentence was given. . He continues:)

I who make a daily study of the judicial life of my country say that there is danger ~~xx~~ of perverting this method. Crimes of violence, blood and resistance are the chief crimes in Italy. One must also deplore offenses against order, against the family, theft, swindling, fraud. But in too many cases the conditional sentence has been applied to cases which should meet with prompt, decided and severe treatment. Again the benefit has been applied too largely to persons condemned to imprisonment with hard labor, rather than to those who show less perversity. ~~In the same~~ One must reckon also the number of recalls. That number is constantly increasing. In 1905 1717 persons had the suspended sentence ³¹⁴² revoked. In 1907 there were 3142 such revocations.

It is important to see if the number of recidivists has increased during these years, that one may see how the suspended sentence affects recidivism. The number has increased. It cannot

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then be said that the first three years of the application of the suspended sentence has exercised the beneficial effect on recidivism that was expected. . . That is why I maintain that if beneficent measures are to be considered as the result of a rational development of a penal system, it is equally necessary to maintain the principle of repressive, intimidating and defensive measures, as a means of education and of social protection.. I would say that besides benevolent social justice for first offenders there should be rigid and severe measures, , with an indeterminate sentence, for habitual criminals, who are a permanent social danger. .

The conditional sentence is a measure of social justice which may be used for delinquents whose crimes are less serious, who do not show dangerous tendencies and who have violated the law under conditions that permit indulgence, so that it may be believed that after the admonition of the judge they may be trusted to return to free life and mingle with honest citizens with safety.. At the same time social security would be shaken to its foundation if it were believed that every first offender would be excused. It is against this danger that all countries should guard in adopting the suspended sentence as an act of justice.

Conclusions. 1. In Italy up to the present time, the conditional sentence has been applied too too often to crimes and to delinquents who were not worthy of it.

2. In a great number of cases its application ought to be subordinated to an equitable indemnification and the payment of the cost of the trial.

3. For juvenile delinquents even the conditional sentence should be excluded and every form of penal procedure and measures of moral reform should be substituted for them.

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Stoppato **b**

4. Legally the function of the judge ought not to be confined to the consideration of legal objective conditions , but he should by law be compelled to take into consideration the psychology of the criminal , the quality of the offense and the conditions of criminality.

5. The solemn and public admonition of the judge in pronouncing the suspension of the sentence ought to be considered as the confirmation of that sentence.

6. It is not necessary to admit suspension of sentence.

7. To benevolent measures admitting delay of executing sentence for first offenders , there should be added severe measures for recidivists and habitual criminals

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