

# Theory and Practice of Probation on Bail in the Report of John Augustus

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**A REPORT OF** *the Labors of John Augustus for the Last Ten Years, in Aid of the Unfortunate ...* (1972) is a terse account, despite the lengthy title, of what John Augustus did as an inventor of probation for criminal offenders in the United States. First published in 1852, the report described what he did, leaving it mostly to the reader to piece together the why and how of it. It is a record of extraordinary success from the day Augustus began in 1841 until publication of the report 10 years later. Despite formidable opposition, he managed to continue his labors at least until the year before his death at the age of 75 in 1859. The self-effacing Yankee friend to the unfortunate revealed very little about himself in his report. Nor did he take the trouble to explain what philosophy guided his actions, other than some general references to Christian charity; nor did he offer any organized presentation of what tactics he found most effective. He had no actual coworker or disciple to explain or carry on his labors, although similar work was apparently being done by one other Boston philanthropist, John M. Spear, of whom little is known (see Augustus, 1972, pp. 60-61, 79, 81, 100; in what follows, all page references are to Augustus, 1972 unless otherwise specified). Starting in 1872, thirteen years after Augustus' death, Rev. Rufus W. Cook, chaplain of the Boston jail, carried on volunteer work similar to Augustus and Spear until 1878, when the State of Massachusetts passed legislation to appoint an official probation officer for the city of Boston.

What is known about Augustus himself comes from fragments in the *Report*, published testimonies (Anonymous, 1859;

Fenner, 1856), and newspaper accounts which Augustus included as a sort of appendix incorporated in the report. Augustus was born in Woburn, Massachusetts in 1784. He moved to Lexington in 1805, where he established a prosperous shoemaking business. He donated a large parcel of land to that city for the construction of a school, the Lexington Academy. It was the time when Horace Mann in Massachusetts was leading the education cause in America, starting with mandatory education, school construction and systematized management of schools. At about the age of 29 Augustus married a twenty-year-old woman known to us only as Sally. They had a child whom they named Harriet. The daughter died when less than a year old, and Sally died about the same time. Some years later Augustus married again, this time to Harriet Stearns. They had a daughter, whom they also named Harriet, who died at the age of 10. However, they had two sons who survived. Augustus and his wife did raise at least one girl, his first child client, who "is now married happily, and resides in Worcester county of this State," Augustus wrote at the time of the *Report* (p. 14).

When Augustus moved to Boston in 1827, he again established himself as a shoemaker. He had five or six employees. When he began bailing people in 1841, he took to working much of the night to keep his shop going. For the first two years he had only his own income to support his activity, but he began to get financial help from others after that. Still, his own financial resources were exhausted after four years, he had to give up his business after the fifth year, and thenceforth was

entirely dependent on help from others (see pp. 103-104). He relied on Boston philanthropists to support his bail activities and even to post bail for himself when his enemies conspired to imprison him. Augustus was already about 57 years old, older than the average life span at that time, when he began his labors on behalf of the unfortunate. Even so, he was a very determined, very independent, very fast-talking bundle of kinetic energy who amazed people by how much he did in a day. He was described as "a thin, elderly man of medium height, his face somewhat wrinkled, and his features of a benevolent expression," a "warm-hearted and impulsive man," who "generally utters what is uppermost in his thoughts, without stopping to calculate the effect which it will be likely to produce" (p. 75).

In addition to his labors on behalf of those in trouble with the law, Augustus was well known for the help he gave to abandoned children and to people who were ill and destitute. On one occasion, in 1848, he played a major role in persuading a church group to forgo construction of a new church and instead use their funds to establish a home for abandoned children (see p. 43). Augustus' work on behalf of offenders was only part of his charitable activities.

In Augustus' report it is possible to discern from what is written and what is unwritten a coherent theory which guided the court interventions of Augustus as well as a consistent set of tactics adapted to specific types of cases. Classification of offenders was the starting point for Augustus' labors, which developed over time more by chance than by design. A chronological approach is the easi-

est and most accurate way to an understanding of his court interventions.

### John Augustus' First Case— A Common Drunkard

Augustus was emphatic in declaring that he did not work for any kind of charitable or reform society. A newspaper article reported,

John Augustus was out on his daily mission of love and charity, at an early hour in the morning of the great Odd Fellow's Celebration.... Mr. Augustus has invariably declined to connect himself with any Lodge of Odd Fellows, whose principles he so well illustrates in his life and labors. He is a Lodge in himself "a true Odd Fellow, uncreated by any association or body of men" (p.68).

Augustus' first endeavors were limited to reforming alcoholics. Temperance societies were active throughout America. The largest were the George Washington Temperance Society for men and the Martha Washington Temperance Society for women. Augustus was quite familiar with these societies, and those in Boston soon became familiar with him. The *Report* mentioned the "Washingtonian Temperance reform" (p. 4), "the Martha Washington Temperance Society" (p. 12), and "the Sons of temperance" (p. 98). Quite apart from his work bailing offenders, Augustus often appeared at the homes of drunkards to help restore peace (see p. 97). But Augustus did not work for temperance societies, nor draw financial support from them. In some manner unknown, he developed his own network of charitable supporters, among whom were some "merchant princes" of Boston and other prominent philanthropists (p. 28; see also pp. 36 and 44). Still, the temperance movement rather than religion, enlightenment philosophy, or civic duty provided the first impetus for Augustus' labors.

Augustus' first case was described in three different places in the *Report* (pp. 4–5, 26, and 72), first by Augustus himself, then a second and a third time in documents by others which he cited. Augustus himself, reporting in his usual laconic manner, writes that he spotted a common drunkard about to be tried, spoke to him briefly, and was convinced that the man would reform. He waited while a very clear and convincing case against the man was presented and the man was found guilty, then intervened to post bail before the man was sentenced. The judge consented, Augustus had the man take "the pledge," and

the man was fully reformed before returning to court for sentencing less than a month later. At that time the judge, delighted with the man's transformation, imposed the token sentence of a one-cent fine and court costs. This set a precedent for later cases. In all later cases of poor defendants, the fines were nominal, although substantial fines were imposed on Augustus' reformed clients whose friends or family had the resources to pay (see p. 58).

Augustus did not tell why he was in court that day when the man was arraigned, nor whether he had any prior acquaintance with the court. However, some reasonable deductions may be drawn from the bare bones of the account. First, Augustus seems to have been familiar with both the physical layout and the routines of the court. He knew that the man was brought in through the door from the lock-up; he knew when and where to approach the man for a private conversation; he knew when to intervene in the proceeding and what form his intervention should take, namely an offer to stand bail for the man. Whether John M. Spear was already acting in a similar manner at that time is unknown. The circumstances hinting that Augustus was familiar with the court and the absence of any inquiry by the judge suggest that Augustus himself may not have been a stranger to the judge. Throughout Augustus' report one finds that some judges consistently took his side even when other judges and other members of a court opposed him. Augustus may have been frequenting the police court in search of a suitable case prior to that day in August, 1841.

A suitable case would be a case of a "common drunkard," legally defined at the time as someone who had been arrested for intoxication at least three times in a six-month period (see p. 84), whose circumstances intimated the likelihood of successful reform. Augustus reported that he had the man take "the pledge" on the spot. The pledge was an oath not to drink alcohol ever again. The pledge, which was still in common use by temperance advocates a hundred years later, was a written pledge which was signed and handed over to someone else, in this case to John Augustus. Augustus apparently went to court with a pledge form in his pocket. He was probably looking for a common drunkard to reform that day.

Augustus was not interested in a first offender or an occasional offender. He was looking for a common drunkard, a habitual offender. This would not be an easy case for

reform. Augustus did report that he looked the man in the eye during their conversation before the trial, which some readers have taken to be a spooky ability to determine character by peering into a man's eyes. However, Augustus was a much more level-headed Yankee than that. Augustus did not disclose the contents of his conversation with the man, but it may be surmised from accounts of his later interventions with other habitual drunkards. Augustus' inquiries always concerned the drunkard's family. There is no indication that Augustus ever took a case of an unmarried drunkard or one with no children. Augustus' conversation with the man probably aimed at ascertaining whether the man had a wife and children and whether the wife was a sober and faithful wife and mother. Indeed, Augustus' follow-up report on this first case highlighted these facts, originally omitted, that the man had a loving and dutiful wife as well as children.

The *Report* (pp. 53–57) included a newspaper account of an extreme case of a long-time drunkard who was deemed beyond help by everyone except Augustus. However, among the details of the account were the facts that the man's wife and child were in court at the trial, and that the man's wife was a devoted wife and mother, although the drunkard had not provided for them for a long time. Apparently these were the most essential facts in Augustus' mind, and so to everyone's surprise he stood bail for the man. Augustus' follow-up report on the case indicated that the man reformed, the family moved from the city, and it had become a happy and comfortable family. In addition to the clues contained in case reports, the importance of the family in Augustus' reform efforts was highlighted in other ways. For instance, Augustus advised that the various temperance societies would be more successful in reforming drunkards if they "should visit the abode of the drunkard," "become acquainted with the condition of his family," and "more frequently visit the families of drunkards" (p. 98). Augustus regarded "home visits" as a necessary part of the strategy to reform people.

All of Augustus' reports of reforming grown men were characterized not only by employment but by immediate employment. Augustus' own accounts of his work with grown men did not include any mention of helping them find employment, although the summary of his work presented to the Massachusetts State Legislature in 1845 by some citizens of the County of Norfolk stated that

Augustus helped his first client find employment (see p. 26). At any rate, it may be that Augustus' criteria for selecting a case included an assurance of the individual's ready ability to earn a livelihood. The person had to have the means or the connections necessary to begin immediately to support his family.

### **A Theory of Rehabilitation during a Period of Probation before Sentencing**

A theory of rehabilitation is implicit in the account of Augustus' first case. It is both a family-focused social theory and closely connected psychological theory. Despite his familiarity with temperance societies and his occasional guarded cooperation with them, Augustus did not demand or suggest that the drunkards he bailed should join a temperance group. It would seem a natural and easy thing to do, given his initial focus on common drunkards. In addition, he had a generally positive attitude towards temperance societies. At one point he spoke of the good work done in the Martha Washington Society by one of his former charges. But Augustus seems not to have accepted the idea that a temperance society might be, in modern terms, a support group or therapeutic milieu for the reform of an individual. His later work with other types of offenders manifested an insistence on separating offenders from their criminal acquaintances. Perhaps with drunkards also he believed it necessary to distance one offender from others. Augustus specifically recommended that the Sons of Temperance and other "temperance societies of whatever name" should adopt his practice of visiting the families of drunkards (pp.98–99). In Augustus' theory of rehabilitation the only social support group for rehabilitating a drunkard was the family. His was exclusively a family-centered approach to reforming the individual.

In describing his first case, Augustus remarked that the man's initial appearance suggested that he might "never be a *man* again" (p. 5, italics in the original). The same phrase, "to be a *man* again," appears elsewhere in the report. Here is the psychological dimension of Augustus' theory of rehabilitation. It is somewhat akin to the more general modern concept of self-esteem. But it has much more precise meaning in the writing of Augustus. For Augustus there was only one way the offender might become a *man*, and that was by supporting his family. In the thinking of John Augustus, perhaps typical of the age, one became fully a man only by having and support-

ing a family. To be a man was to be the man of the house. Thus, from a psychological perspective as well as a social perspective, the family was the key to rehabilitation in the theory and practice of John Augustus.

Augustus did not use the word "probation" as a term for what he was doing. He referred to his activity as "bailing" people, e.g., "This year [1848] I accomplished a greater amount of labor in bailing persons, than during any other single year since beginning my labors in the courts" (p. 37). When he did use the word "probation" it was in the old-fashioned but ordinary sense of "testing" or "trial," as the word is still used when referring to the initial employment period of a police officer or firefighter. Furthermore, this period of probation was not an alternative sentence in place of imprisonment, nor was it a suspended sentence. It was a period of testing prior to sentencing, for the purpose of determining what sentence would be appropriate for the particular offender. In cases where the individual seemed to be reformed before sentencing, the actual sentence imposed on Augustus' charges was a token fine. In cases where the individual did not reform, the sentence was imprisonment.

There may have been several legal precedents or bases for what Augustus did. The English court practice of "recognizance" in the case of petty offenders enabled the offender to pledge appropriate conduct and provide a bond to secure his release until a specific date when the case would be tried or otherwise disposed of. The cases of Augustus' clients had already been tried but sentences had not yet been imposed. Either way, a specific period of probation was established by the court. What might have been novel from this perspective was that Augustus was not the defendant and furthermore was a stranger to the defendant rather than a relative, landlord or employer. It may have been an additional innovation that subsequently Augustus was able to stand bail for numerous offenders.

In English courts there was also an established practice of "judicial reprieve" whereby the imposition or execution of a sentence was postponed, generally to allow the convicted to apply for a pardon. But none of Augustus' clients sought pardon from anyone, and all were eventually sentenced to either fines or imprisonment, even if the sentences were token. Their "probation" was not an alternative sentence. The English barrister and philanthropist Matthew Hill, who first advocated a form of "probation" in England in the

same year as Augustus in the United States, 1841, was inspired when he observed that some English judges imposed a token sentence of one day in jail on young defendants whose subsequent conduct would be supervised by a parent or master. These cases were considered concluded, and these defendants did not return to court for any future approbation or sentencing. From this practice evolved a broader English court practice of placing young defendants under the supervision of reputable volunteers who might not be the defendant's parent or master, to which were added follow-up reports and oversight by inspectors. However, these cases were also considered concluded, and it was only upon commission of a subsequent offense that the individual might be punished further. In Massachusetts there was unique legal provision for delaying sentencing when "public justice does not require an immediate sentence" (Allen, et al., 1985, p. 39), but this provision may not have required posting bail. By 1836 there was also legislation in Massachusetts encouraging the release of petty offenders "upon their recognizance with sureties at any stage of the proceedings" (Allen et al., 1985, p. 40). From a legal point of view, Augustus' practice is probably understood best as he described it, "bailing people" and providing them a period of probation in which to demonstrate self reform after conviction but prior to sentencing.

### **Augustus' Second Kind of Client—Female Drunkards**

If Augustus' cases are described in terms of offender classifications, Augustus' second class of offenders was female drunkards. At first he refused to get involved in these cases. When passing by jail cells on the way to visit a defendant prior to trial in July, 1842, Augustus was accosted by a woman in another cell who begged for his help. His reputation for bailing people was already established, and she knew how to appeal to him. She told him emphatically that she had a husband and children. Still, he refused to help her. But later he felt guilty for doing so and resolved to take the first suitable female case. Then a woman from a temperance society came to him and asked him to take the case of a different female drunkard. Before agreeing, the always methodical Augustus checked out the case. He found the woman's husband at his job and was assured by him that he was a loving and dutiful husband and that they had small children. Augustus' theory and practice in re-

forming female drunkards was the same as with males, a family-centered approach. Augustus then bailed the woman, his first case with a woman. A follow-up visit to the family on the next Sunday found a scene of domestic bliss with the children being dressed for Sunday school. The home visit was another vital component in Augustus' family-centered probation practice.

### Bailing and Reforming Children

Augustus' third class of offenders was children. It happened by accident in October, 1843. He chanced to be in court when two children were arraigned for larceny. The circumstances of the case were quite muddled, for the children were charged with stealing from a store whose employees were teasing the children by seizing apples the children were selling. The children were two sisters, ages 8 and 10. The father of the girls appeared in court. He was drunk. He blamed the older girl and condemned her as fit for prison, but he spoke kindly of the younger girl. Moved by the injustice of the criminal charges and the girls' misfortune in having a drunkard father, Augustus intervened to stand bail for the younger girl. He seems to have accepted the father's condemnation of the older girl, at least at first. Augustus took the younger girl home with him. But he may not have intended to keep her in his house. The next day he went to find the girl's mother. When he found her, she turned out to be a drunkard. Augustus would not return the girl to two drunkard parents. This did not at all meet his standard for a suitable family. He decided to raise the younger girl in his own family. He reported that it was as if a voice had said to him, "Take this infant under thy guardian care, for she has none to help her; be thou her father and her guide..." (p.14).

As for the older girl, an acquaintance of Augustus, who probably learned about the case from Augustus, told Augustus that his wife was willing to take her in and he asked Augustus' aid in securing her release from prison. This was arranged, and so the sisters were placed separately with solid, middle-class families. This accidental arrangement seems to have become the pattern with Augustus' way of working with children. It was consistent with his ideas about the family, albeit an adopted family. One might note that childhood as it exists today was scarcely known in the 1840s and would hardly encompass anyone over the age of ten or twelve. Starting with household chores at a very

young age, children were expected to do work in the labor-intensive 1840s world of few machines or conveniences.

Although Augustus later took many cases involving children brought to court on various charges, starting with an 11-year-old boy later that same year, his report mentions only one case in which the charge was a violent crime. That was a seven-year-old boy charged with rape. Augustus seems to have found the charge incredible in that case. Most of the cases with children involved charges of larceny. Augustus confined his efforts "mainly to those who were indicted for their first offense, and whose hearts were not wholly depraved, but gave promise of better things" (p. 19). Augustus' strategy with young offenders was to "see that they were sent to school or supplied with some honest employment" (p. 35). He also petitioned the court to postpone sentencing in these cases time after time so that the "season of probation" could be extended for several months instead of the cases being concluded in a one-month term.

### The Case of the Madam

In 1845 Augustus was approached by a woman who had been indicted for running a house of ill fame. The woman asked Augustus to provide surety for her, and she promised that if he did she would "leave the city, abandon her career of vice, and return to her friends in the state of New York" (p.21). Augustus agreed. This became Augustus' fourth class of offenders. It was a new kind of client for Augustus. But this turned into the case where a misunderstanding on the part of the woman's lawyer caused the woman to miss her court appearance and Augustus' enemies conspired to make it look like he assisted her to flee, for which they tried to get Augustus himself imprisoned. Supporters intervened to bail Augustus himself. In his defense in this case, Augustus pointed out that he had caused one other house of ill repute "to become desolate" (p. 22), although he did not specify how he did this.

The women who ran houses of prostitution may not have owned the houses they ran. Augustus reported nothing clearly on this point but the particulars of his one clear case suggest that the woman left the house immediately without selling it. It seems to have been Augustus' efforts to shut down houses of prostitution that finally prompted his opponents to try to put an end to his activities. From the beginning Augustus encountered opposition from police officers assigned to

work in court and prison officials who collected fees for each case remanded to prison. That such police officers and prison officials derived a substantial part of their income from fees was a practice which can be traced back to the Middle Ages in English and European legal systems and tracked forward into the twentieth century in some American states. But Augustus strongly implied that police, and very possibly other court officials and perhaps politicians, also derived income from houses of prostitution. When it came to shutting down houses of prostitution, "the strong arm of the law was averse to such an act" (p. 22). In the *Report* there is no mention of Augustus ever taking another case of this kind.

### Rescuing Young Prostitutes and Placing Them in Families

Augustus' fifth class of offenders was young prostitutes, starting with seven girls from ten to thirteen years of age rescued from houses of ill repute in 1847. Boston in the 1840s was a very busy and bawdy seaport with an influx of destitute Irish immigrants. Some of the prostitutes were quite young, and to Augustus they may have been just a small step beyond his child cases. For instance, there was the case of "a little Irish girl, about 14 years of age" who was rescued from a brothel in the "black sea," which seems to have been a denizen of black sailors (p. 69). In such cases Augustus seems to have followed the criterion of taking only first offenders. Augustus' theory of how people fall into a life of vice or crime was not a one-step theory. The report speaks of people falling into a vice not so far as to be beyond hope. In other words, an individual's fall is progressive, starting with a single lapse and progressing to a point beyond reform. But with young prostitutes Augustus seems to have drawn the line of no return strictly. A second arrest placed a prostitute beyond his hope for reform. The report narrates the trial of an older prostitute in which the gross injustice and corruption of the court irked Augustus greatly, but he did not offer bail for her (see pp. 9–11). However, for a young offender, the first arrest might itself be the culmination of many years of falling into criminal habits. Augustus narrated the case of a girl whose father "died a drunkard's death" when she was only seven years old, and who then entered the "street school," where she learned to beg, lie and pilfer before she became an inmate of a house of prostitution at the age of fifteen (pp. 59–60). Augustus

placed the girl with a family where she became "faithful and industrious," so that when she appeared in court for sentencing only the usual token fine was imposed.

For the young first-arrest prostitutes Augustus' program of reform consisted of placing them as domestic servants (e.g., see p. 59, p.63). Domestic service was, by far, the most common employment for women at that time. A survey of women's employments in New York City as late as 1907 (Bache, 2000) found that the second largest employment category for women was seamstresses, employing 15,069; but 103,963 women were employed in domestic service. It is not surprising that female offenders on probation or parole were generally steered towards domestic service until the middle of the twentieth century. To Augustus, domestic service was not merely convenient but ideal because of what it entailed in the nineteenth century. In Augustus' time it was ordinary for a middle class family to have several domestic servants. They usually lived on the bottom floor of the house and were given only a meager wage in addition to room and board. The lady of the house diligently supervised the servant girls, teaching them domestic skills, sometimes reading and writing also, manners and deportment. For example, in the case of a fifteen-year-old homeless immigrant girl placed in a household by Augustus, he reported that "the lady [of the house] who was very kind, took especial pains to instruct her properly in her duties..." (p. 98). The lady of the house also governed the domestic servants' behavior outside the house, considering it her duty to protect diligently the reputation of the household. This kind of setting was well suited to Augustus' ideas about how to reform people. It approximated a family structure. The ordinary family structure at that time was not the nuclear family but rather the extended family, which included various relatives and even non-relatives, such as a master's apprentices. The family structure could easily absorb a young woman rescued by Augustus. It would not comport with Augustus' theory of rehabilitation to have these young women living alone or with just other young women, or to have them employed in less controlled settings. The young unfortunates had to be surrounded by nurturing but controlling people, given responsibilities, and kept apart from other offenders.

Starting in 1845 Augustus had bailed young women who were without a home and needed temporary shelter. During 1846 he

found temporary shelter for a total of forty females. In the ensuing years as many as 15 at a time were given temporary shelter in his own house. He also placed some women in other homes on a temporary basis and even made arrangements for some to be provided for in a boarding house at considerable expense. In addition, places were found for some girls and young women in charitable institutions. Finally, in 1848, Augustus met with a group of some 25 philanthropists, who agreed to provide funds for a home where females might stay as long as the exigencies of their cases required. It would be contrary to Augustus' thinking to envisage some sort of group housing as a reforming environment. But he was overwhelmed by the number of young girls needing help. It was a challenge to find places for all of them in suitable households and on short notice. He did specify that the housing for young women would be only a place for temporary lodging.

### Continuing the Work of John Augustus

At the end of the *Report* (p. 100), Augustus wrote that his activities would not continue on so large a scale in coming years, due to his increasing age and the general condition of his health. He hoped that some other person would come forth to continue the work and that John Spear would continue to labor for the fallen. Admirers of Augustus debated whether the state should appoint someone to do the same kind of work, but they believed that such work would be done most effectively by unpaid volunteers prompted by personal convictions (see p. 61). Given the corruption among court officials noted by Augustus throughout the *Report*, and considering the efforts of corrupt police officers to profit by being assigned as probation officers when laws authorizing probation officers in various places were passed about a half century later (see Lindner, 1994), Augustus' admirers may have been right at that time. The 1878 Massachusetts law which provided for the first paid probation officer required him to report to the chief of police; but this was changed three years later so that the probation officer then reported to the State Commissioners of Prisons. The law was revised again in 1891 to bar active members of the police force from acting as the probation officer. Uncertainty and experimentation characterized the early years of probation. A mix of paid and unpaid probation officers with police officer, court officer, truant officer, or social work backgrounds were to be found among the officially appointed probation officers in various cities (see Lindner &

Savarese, 1984a; Lindner & Savarese, 1984b; Lindner & Savarese, 1984c; Lindner, 1994). Understandably, those with some kind of law enforcement background approached the work with a law enforcement ideology, while those with a social work background approached the work with a social work ideology more like the theory and practice of John Augustus. But John Augustus' theory and practice were guided more specifically by convictions that a family was the social setting for reform and that the self-esteem which came from fulfilling one's obligations, particularly family obligations, was the psychological basis of reform.

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