

Corrections Goes Public (and Private) in California	<i>Dale K. Sechrest David Shichor</i>
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This Issue in Brief

Corrections Goes Public (and Private) in California.—Authors Dale K. Sechrest and David Shichor report on a preliminary study of two types of community correctional facilities in California: facilities operated by private for-profit corporations and facilities operated by municipal governments for profit. The authors compare the cost effectiveness and quality of service of these two types of organizations.

Mandatory Minimums and the Betrayal of Sentencing Reform: A Legislative Dr. Jekyll and Mr. Hyde.—According to author Henry Scott Wallace, mandatory minimums are "worse than useless." In an article reprinted from the *Federal Bar News & Journal*, he puts mandatory minimums in historical perspective, explains how they fall short of alleviating sentencing disparity, and offers some suggestions for correcting what he describes as a Jekyll-and-Hyde approach to sentencing reform.

Juvenile Detention Programming.—Author David W. Roush focuses on programming as a critical part of successful juvenile detention. He defines juvenile detention and programming; explains why programs are necessary; and discusses objectives of programs, what makes good programs, and necessary program components. Obstacles to successful programming are also addressed.

Legal and Policy Issues From the Supreme Court's Decision on Smoking in Prisons.—In *Helling v. McKinney*, the Supreme Court held that inmates may have a constitutional right to be free from unreasonable risks to future health problems from exposure to environmental tobacco smoke. Authors Michael S. Vaughn and Rolando V. del Carmen discuss the legal and policy issues raised in *McKinney*, focusing on correctional facilities in which smoking or no-smoking policies have been a concern. They also discuss litigation in the lower courts before *McKinney* and how this case might shape future lower court decisions.

Community Corrections and the Fourth Amendment.—The increased use of community corrections programs has affected the special conditions of probation and parole imposed on offenders. Author Stephen J. Rackmill focuses on one such condition—that proba-

tioners submit to searches at the direction of their probation officers. Explaining the importance of the Supreme Court's decision in *Griffin v. Wisconsin*, the author assesses the case law before and after *Griffin* regarding searches and points out that policy regarding searches is still inconsistent.

A Study of Attitudinal Change Among Boot Camp Participants.—Authors Velmer S. Burton, Jr., James W. Marquart, Steven J. Cuvelier, Leanne Fiftal Alarid, and Robert J. Hunter report on whether participation in the CRIPP (Courts Regimented Intensive Probation Program) boot camp program in Harris County, Texas, influenced young felony offenders' attitudes. The authors measured attitudinal change in

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From Augustus to the Progressives: A Study of Probation's Formative Years*

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A new form of social organization is as much an invention as a new kind of arrowhead, and may be more significant. However, an invention, material or nonmaterial, acquires significance only when accepted. (Martindale, 1981, p. 39)

THE PURPOSE of this article is to develop further our understanding of the origins of probation. Most writings on the subject offer an account of John Augustus' work but go no further in explaining the background and circumstances of the invention of probation. Expanding our knowledge of the evolution of probation will help us understand how changes occur in various forms of punishment and help us anticipate other changes in the future.

The Early Years of Probation

In 1841, the first sustained services resembling modern day probation were provided in Boston and in Birmingham, England. And while M.D. Hill is credited with being the first English probation officer (Timasheff, 1941a), John Augustus is acknowledged to be the first American probation officer. Augustus was born in 1785 in Woburn, Massachusetts. He later prospered as a cordwainer and bootmaker in Lexington and then moved to Boston where he also did well (Chute & Bell, 1956, p. 37). In Boston, John Augustus was active in various temperance societies which led him to develop an interest in saving men and reclaiming drunkards (Chute & Bell, 1956, p. 44).

During the first year Augustus supervised only men, but later he expanded his efforts to include women and juveniles. His method was to provide bail for temporary suspension or postponement of sentence, during which time he counseled and assisted his charges in finding homes, securing employment, and adjusting to family difficulties. At the end of the probation period he brought the person back to court, and if no further complaint had been lodged, the judge imposed a nominal fine with costs. If a man was too poor to pay, Augustus advanced a loan.

Essentially, probation, as conceived by Augustus was the execution of concrete measures aimed at helping the offender stay out of further trouble (Diana, 1960, p. 190). Augustus believed that many more were saved from crime by his methods than could ever be

saved by cruel techniques of punishment (Chute & Bell, 1956, pp. 46-47). As with those involved in the child rescue movement 20 years earlier (Fox, 1970, p. 1190), Augustus was only interested in those he felt worthy of rehabilitation and those who exhibited the greatest likelihood of refraining from further criminal activity (Champion, 1990, p. 13). This practice certainly skewed his results, but considering his limited resources, he would have been foolish to do otherwise.

By 1847 he was giving all of his time to his new vocation (Chute & Bell, 1956, p. 38). As a result of John Augustus' hard work, it soon became the rule of the court in Boston that a person charged with being a common drunkard could be granted probation.

Augustus met with a great deal of opposition. Criticism came from the press, politicians, and especially criminal justice personnel. Beside accusing him of upholding crime and not offering sufficient deterrence, his detractors called him a fanatic and a fool. Augustus responded that people too easily identify a particular class of individuals as evil when only a few of them are such.

Jailers felt threatened by Augustus because they were paid according to the level of occupancy of the jail and because his philanthropy directly decreased profiteering among those jailers who embezzled funds allocated for inmate care (Champion, 1990, p. 13). The county attorney opposed Augustus because he objected to the postponements cluttering his docket (Chute & Bell, 1956, p. 45). Augustus' effort cost him dearly and forced him to face the realities of urban law enforcement.

John Augustus did not stand alone. Influential people, including Horace Mann, Theodore Parker, and Wendell Phillips, gave him both moral and financial support (Chute & Bell, 1956, pp. 48-49). Horace Mann wrote, "Your labors favor all classes, they tend to reform the prisoner; they render property more inviolable; they give additional security to every man's person, and every man's life" (Augustus, 1972, p. 61).

Augustus attracted several philanthropic volunteers. John Spear was one person who was known to have worked closely with Augustus (Chute & Bell, 1956). After Augustus' death in 1859, various prisoners' and children's aid societies, many religiously

*An earlier version of this article was presented at the annual meeting of the Academy of Criminal Justice Sciences, Kansas City, 1992. The author would like to express his appreciation to Milton Brooks and Frederick Roth for their comments on this work.

based, continued to supervise convicted offenders on probation (Krajick, 1980). Estimates are that thousands benefited as a result of these voluntary services (Champion, 1990, p. 11).

After Augustus' death, procedures became more formal. State visiting agents by 1869 had begun to cooperate in the practice of probation. Private children's societies and visiting agents had indicated the need for social investigations and casework guidance for many offenders. Visiting agents attended court hearings, conducted investigations, and made suggestions as to the release of children on probation (Timasheff, 1941b, p. 11). This was the first instance of an agency established to investigate and take charge of delinquent children. Subsequent reports showed that nearly one-third of all children brought to trial were placed on probation (Chute & Bell, 1956).

By the mid-1880's the imprisonment of children in adult institutions had become an issue because it flew in the face of cultural conceptions of childhood (Garland, 1990). Officials often acquitted juveniles for minor offenses because of a reluctance to imprison them (Fox, 1970, p. 1194). And while incarceration was considered too harsh, the other choice, doing nothing, was considered too mild. Both options seemed to increase crime among juveniles (Bernard, 1992, p. 87). This condition became the object of reform campaigns resulting in probation and juvenile reform (Garland, 1990, pp. 201-202).

After its early philanthropic stage, probation was taken over by the state and given statutory authority and funding for salaried officers who gradually replaced the volunteers (Rotman, 1990, p. 157). Chute and Bell (1956) report that in 1878 a statewide probation law took effect in Massachusetts. With the passage of the 1880 bill, cities and towns throughout Massachusetts were authorized to employ probation officers. The first paid probation officer was put under the control of the chief of police. This officer, Lt. Henry Hemmenway, worked for a short time and then was replaced subsequent to his promotion to captain. Following the lead of Augustus, he and his successors supervised probationers who were reasonably expected to reform (Timasheff, 1941a, p. 17). The use of the police officers to supervise probationers was quickly acknowledged to be a mistake, particularly by the settlement house workers (Lindner & Savarese, 1984). By 1881 all probation officers were to report to the state commissioner of prison, and by 1891 no Massachusetts probation officer could be an active police officer.

Chute and Bell (1956, p. 65) noted that in 1888, eight cities and five towns reported 1,985 persons placed on probation during the year. In 1889, with 49 probation officers in the state, 20 cities and towns reported 2,251

probationers. By 1891, the courts were granted the power to appoint officers, pay them salaries, and coordinate their work with county commissioners. It was at this time that Hannah Todd became the first salaried woman probation officer in Massachusetts. Some of the early officers came to work with educational credentials reflecting the new social science training they had obtained from the universities. Massachusetts thus became the first state to provide mandatory statewide salaried probation services and to make dispositions available to all persons charged with a crime. Boston soon had a separate division for juveniles, and by 1908 the state took over the supervision of clients (Chute & Bell, 1956). The various departments were to grow into large bureaucracies so that today there are 950 officers supervising over 90,000 probationers in Massachusetts (Camp & Camp, 1989).

Factors Affecting Probation's Evolution

By combining the elements of suspension of punishment, personal care, and supervision, probation owes its origin less to legal doctrines than to social needs emerging from practical experience (Grunhut, 1948, p. 298). It was not believed that with this combination of services the client would become a pillar of the community, but rather it was hoped everyone involved would be concerned with the isolated and immediate problems of an individual living in a rapidly changing society, as America was at the end of the 19th century and the beginning of the 20th century (Mills, 1964, p. 96).

The evolution of probation can be understood by considering major societal changes, the influence of the values offered by the Enlightenment, the quality of life found in Boston in the 1840's, the growth of the bureaucracy, and the professionalism of the Progressive movement.

Before the institutionalization of probation, it was necessary for the right social conditions to prevail. Emile Durkheim may have considered probation an inevitable outcome of the organic solidarity found in modern society. Durkheim argued that the intensity of punishment diminished as society evolved from the mechanical to the organic form. Simple societies resort to severe measures because the intensity of the collective conscience sees any violation of a law as similar to violating an important religious precept.

The offended sentiments in advanced societies are less demanding and occupy a less prominent place in social life. Modern organic societies are morally diverse and possess a system of shared beliefs which emphasizes the value of individuality, freedom, dignity, reason, tolerance, and diversity. The tone and quality of the sentiments found in a society dominated by organic solidarity invite reflection and rational

ethical consideration. Ultimately, Durkheim claims, upon reflection imprisonment would be considered anachronistic with the new moral conscience (Durkheim, 1983). As society moves from the mechanical to the organic form, it needs also to develop a set of principles to guide it along. These were provided by the Enlightenment.

The Enlightenment was co-extensive with the 18th century, beginning with the Glorious Revolution and ending with the defeat of post-revolutionary France in 1815. In North America, it influenced the debate surrounding the American Revolution and various social and political issues that came after independence. The Enlightenment was important for probation in three ways: it gave a voice to philosophers who promoted a new conception of man; it required a reconsideration of the notion of justice, and it provided a basis for considering various social reforms of that time.

The Enlightenment provided a new set of values recognizing the innate dignity of the individual (Martindale, 1981, p. 35). Montesquieu (1988, pp. 37-38), a French political philosopher who lived from 1689 to 1755, believed that with moderate governments, conviction alone offered sufficient punishment, and, thus, it did not require much force and severity. Beccaria (1963), another important figure in the Enlightenment, argued that punishments should be chosen so as to make the biggest impression on the person but also to have the least torment on the body. He proposed that it is far more important to have certainty of punishment than severity of punishment. His ideas were taken up by reform legislators across Europe and North America.

These humanists were optimists, confident in the abilities of human reason to solve the problems of humanity's destiny. Society to them was not for the ends of individuals, but their instrument. Institutions were made for people, not people for institutions (Martindale, 1981, p. 37). The Enlightenment also called for restricting the rights of the state and emphasizing the rights of the individual (Timasheff, 1941b, p. 294). By 1800, a significant body of opinion was ready to support penal measures that reflected the sense of equality among people, the worth of the individual, and the rights of all men to fair and equal treatment before the court (Beattie, 1986). The people demanded justice in accordance with the crime committed and without regard to social standing or privilege (Chute & Bell, 1956, p. 7).

Under the pressure of the Enlightenment, earlier forms of punishments gave way to more formal, rational approaches which emphasized uniformity, proportionality, equality of law, and the strict application of rules. What had once been seen, however, as the proper method of application of justice was now only

a few years later considered scandalous and unjust (Garland, 1990, p. 206). The Enlightenment interrupted the movement towards probation which could be observed during the previous centuries. A reaction against the extreme individualism, egalitarianism, and formalism in law represented in the Enlightenment was necessary before probation could be rediscovered (Timasheff, 1941b, p. 295). If, during the earlier centuries, the development of probation was checked by the lack of humanitarian concerns, during the period of Enlightenment, despite expressing broad humane interest, probation could not develop because of a lack of understanding of the need for individualized punishment attainable through judicial discretion (Timasheff, 1941b, p. 295).

Cultural patterns concerning justice and punishment have changed over time and have exerted a direct influence on patterns of punishment (Garland, 1990, pp. 201-202). When historians talk of the cultural patterns which have influenced penal policy, religion and humanitarianism are often given ample attention. This was particularly true of the evangelical reformers of the 18th and 19th centuries whose religious convictions and humanitarian sensibilities tended to play a crucial part in the reformative process and encouraged the shift from institution based to probationary sentences (Garland, 1990, p. 203).

The Protestant passion for reform was insatiable. It searched for every public vice, every secret blemish. It was not "reform" as we think of it today—a strenuously secular, liberal spirit of social improvement—but rather it was full of redemptive ardor. Its referent was the Protestant Reformation and then, of course, the world (Smith, 1981, p. 686). Various cultural patterns which emphasized the reforming influence of religion and humanitarianism were clearly evident at the time Augustus lived in Boston.

Human resistance to change gave way to the desire to convert dreams of the American Enlightenment to reality (Fox, 1970, p. 1188). The 1830's and 1840's were remarkable for New England's economic growth, cultural flowering, and great reform movements. In fact, in the 1840's, major institutions were established in many parts of the country. For example, at this time the Smithsonian Institution came into existence in Washington, DC, and the Philharmonic Orchestra was founded in New York City.

Boston made an attempt to create a city without vice, lawlessness, and disease (Green, 1967, p. 41). Prior to 1840, it had no slums and remarkably little crime. The picture had altered by 1845 when a wave of immigration hit the city and brought with it slums (Green, 1967, pp. 44-45). Intemperance, poverty, criminality, and immorality were all thought to be associated with aliens. The penal system concerned

itself with the question of how to handle these poor. Snaring immigrants in the law enforcement process was a reaffirmation of traditional values (Fox, 1970, p. 1202). However, not all Bostonians held this view.

True to their Puritan traditions, some Bostonians experienced a deep sense of "social responsibility." Those people felt entrusted with the destiny of the alien, socially, and educationally underprivileged (Green, 1967, p. 46). But practically, and in general, the people of Boston believed in the infinite capacity of human nature (Green, 1967, p. 43). The colonialization of America was itself a reform movement, undertaken with a firm belief in man's ability to bring about earthly progress (Fox, 1970, p. 1188).

Intellectual ferment in New England increased with the rise of Transcendentalism which stimulated demands for many kinds of social reform (Green, 1967, p. 42). Transcendentalism was particularly popular because it attacked tenets imposed by authority and urged Americans to stop bowing down to European learning and to strike out on their own (Alden, 1963, p. 330). It was a liberating philosophy which broke up old orthodoxies (Hofstadter, 1992, p. 33). Bostonians took up the challenge and created, experimented with, and reformed institutions dealing with religion, philosophy, education, and literature. By 1835 the "New England Renaissance" became the era of Poe, Emerson, Hawthorne, Melville, Thoreau, and Audubon (Alden, 1963, p. 329).

In the 1840's another reform called for sympathy for the lowest classes. The most prominent peculiarity of this movement was the displacement of religious considerations with an emphasis on the practical needs of the person (Brace, 1961, pp. 114-115). The leaders of this movement included Horace Mann, Dorothy Dix, Theodore Parker, and William Lloyd Garrison, just to name a few (Alden, 1963, p. 329). These reformers focused on the abolition of slavery, the temperance movement, the movement to abolish capital punishment, the abolition of imprisonment for debt, the provision of prisoners' aid, the women's movement, the mental health reform movement, and the prison reform movement (Chute & Bell, 1956; Alden, 1963; Smith, 1981).

John Augustus must have been influenced by the same social movements as these other important figures. Augustus' interests included membership not only in temperance societies, but in antislavery and moral reform groups as well (Chute & Bell, 1956, p. 39). He belonged to all of the reform societies and to all denominations including the Methodists, Universalists, Baptists, and Unitarians, but he considered himself nonsectarian (Chute & Bell, 1956, p. 43). However, much of his work was motivated by the religious impulse to rescue the sinner (Chute & Bell, 1956, p. 49). In many ways Augustus was a man of his times.

After the initial stages of development, when probation relied on a system of volunteers, it moved into the institutional phase where it developed a series of professional ideologies used to justify its existence. These ideologies reflected the bureaucratic growth of the institution as well as the growth of influence of the social sciences.

Stinchcombe (1965) suggests that the capacity of a population to develop organizations is determined by such factors as widespread literacy, specialized schooling, urbanization, a money economy, political revolution, and density of social life. Eisenstadt (1958) and Parsons (1966) go further by including increased role and institutional differentiation, allocation of roles by universalistic achievement rather than particularistic ascriptive criteria, and increased disagreement among societal groups concerning the priority of goals, together with increased competition among them for resources. A bureaucracy also needs resources, including trained professionals, the power to direct these resources, and the support of an environment willing to promote the emergence of organizations (Scott, 1981, pp. 138-139). Ultimately, the process needs to be rationalized.

Probation developed as a rational-legal system for handling large numbers of clients. Laws determined who was subject to probation, who could be employed as an officer, what the officer could do with the client, and how the officer would relate to other officers in his department. From the beginning an incredibly fragmented probation system existed which varied greatly from one court to another. It is believed that in the first days of probation the need to organize a rational system for administering services was an important force behind the drive to systematize probation. The structure of the organization is consciously designed according to rational principles. Discipline at work is assured by a set of rules which try to maximize productivity by carefully considering the means to achieve certain ends (Mouzelis, 1969, pp. 18-19).

The bureaucracy evolves out of the actions of charismatic figures such as John Augustus (Mouzelis, 1969). Weber's concept of the historic movement and its trend toward increasing rationalization creates tension between charisma, representing the creative, spontaneous forces of society, and routine, the drive toward organizational conformity.

Charismatic leaders, such as Augustus, constituted a revolutionary force. In critical moments, when social institutions such as the courts become too rigid and unfit to meet dramatic social changes, the charismatic leader upsets the established order and opens up a new way of life. But the victory of charisma over routine is never definitive. Charisma ends with cooptation and routinization. Thus, when the charismatic

leader dies, disciples must resort to a more formal and rigid organization in order to preserve and continue the movement. In this process, which is so evident in probation, we find the spontaneity and creativity of the early pioneers replaced by bureaucratic structures or by a traditional type of organization, which becomes hostile to any new manifestation of charisma and creativity (Mouzelis, 1969, pp. 19-20).

The bureaucracy made the world more rational but it did not provide a set of values indicating the direction the institution should take us (Mouzelis, 1969, p. 20). This was achieved by the Progressives who developed an agenda for social change which greatly influenced probation. Discretionary decisionmaking so essential to effective administrative practices was made easier and carried more authority because of the greater understanding of people brought on by the development of the social sciences.

"In modern society, certain cultural themes such as the nature of crime and criminals have come to be articulated in what is thought of as a 'scientific' mode, that is to say, as 'knowledges' or discourses which claim a relationship to the truth" (Garland, 1990, p. 209). One such misguided theory which received a lot of attention was social Darwinism which was popular in the United States by 1870 (Hofstadter, 1992, p. 5). The social Darwinist took the positivist approach to crime and considered the rational element in crime to have a reduced significance. Positivism, as taken up by Lombroso, postulated that less biologically evolved people, except white Anglo-Saxon Protestants, tend to commit more crime (Bernard, 1992, p. 85). A chief conclusion of supporters of social Darwinism was that the functions of the state should be kept to the minimum (Hofstadter, 1992, p. 7). Understandably, the view became popular among the power elite (Bernard, 1992, pp. 84-85).

Social Darwinism, however, was not destined to withstand the scrutiny of further scientific investigation. The Progressive movement, as influenced by education and research, challenged social Darwinism and subsequently greatly influenced probation. The emergence of the university in 1870 brought the expertise of the social scientist to bear on old social problems (Hofstadter, 1955). Many Progressive programs were invented by benevolent and philanthropic-minded graduates of university curricula that included courses on the "punishment of criminality" and "public and private charities" (Rothman, 1980, p. 46). Many of them shared optimistic theories that at once clarified the origins of deviant behavior and shaped their efforts to control this behavior (Rothman, 1980, p. 5). Any real change ultimately called for a reconsideration of the effects of the current class structure on the client's condition and would require state

intervention far beyond what the social Darwinist considered necessary.

The Progressives' task was to understand the life history of each offender and then devise a specific remedy (Rothman, 1980, p. 5). The life history was understood by employing either the environmentalist perspective, which located the problem in the wretched milieu, or the psychologist view, which focused on the mindset of the person. Both schools agreed, nonetheless, that each case had to be analyzed and responded to on its own terms, requiring a great deal of discretion, and that some offenders were best treated in the community—hence the need for probation (Rothman, 1980, p. 5).

The Progressives gave probation the professional stature it had been lacking, particularly as it was not wholeheartedly accepted by the court and the police (Hagan & Leon, 1977). The Progressives utilized the discretionary model offered by the medical profession (Rothman, 1980, p. 57). Adopting the individualized approach strengthened the position of probation vis-à-vis other professionals, particularly physicians, who were also in the process of seeking professional status ascendance. A record of unfettered discretion led to abuses and the need for further reforms, which were only recognized in the 1960's.

The success of the Progressives was limited in that the promise of the new social sciences proved to be incomplete. And while the reforms and practices supported by the Progressives have been heavily criticized, they, nonetheless, provided a means for developing a focal point of consistent action permitting the testing of new and valuable ideas.

Conclusion

This article explains the forces which influenced a major shift in forms of punishment. This process began with a change in the concept of the offender, particularly as represented in the cultural forms which expressed society's regard for offenders.

Probation was made possible when the dignity and equality of the individual were recognized during the Enlightenment, when it became possible to argue that horrific punishments were unnecessary to prevent future crime. With this recognition, each individual assumed a new importance, and when combined with discretionary decisionmaking, they could provide help to people in meeting their practical requirements for everyday existence.

John Augustus was a man who in many ways reflected the excitement of his times when major social movements were simmering in New England. Powerful social, political, and religious forces were operating then and later, which shaped probation during its early years. As a result of these pressures it is possible

to believe that if John Augustus had not provided his assistance, eventually, someone else would have done so. Probation was springing up not only in Boston but at the same time in England and on the continent (Timasheff, 1941a). It was a time greatly influenced by the Enlightenment, humanitarian and religious ideals, and a rekindling of interest in the practical problems of humanity and less on the saving of the person's soul. John Augustus was certainly someone special by today's standards but not unique for his time.

Probation was carried forward by the disciples of Augustus, volunteers, and eventually paid probation officers. Probation came to take on the characteristics of a bureaucracy, particularly the rational-legal structure, a factor which has taken on great importance today.

The Progressives provided the professional ideologies and scientific expertise which promoted probation's professional standing and acceptance. While the Progressives may not have been entirely successful in meeting their goals, they nonetheless set the tone for the individual treatment of offenders who possessed certain rights and capabilities.

Today, we have witnessed a shift from humane concerns to matters dominated by bureaucratic interests, and to a new point where technological considerations are beginning to compete with the bureaucracy for primacy in the probation officer's world. For many officers, the organization-technology connection further puts the client out of the picture, a notion that would undoubtedly have caused John Augustus great concern were he alive today.

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