

1923

Reviews and Criticisms

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Reviews and Criticisms, 13 J. Am. Inst. Crim. L. & Criminology 621 (May 1922 to February 1923)

This Book Review is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

REVIEWS AND CRITICISMS

CRIME, ITS CAUSE AND TREATMENT. By *Clarence Darrow*. T. Y. Crowell Co., N. Y., 1922. Pp. 292.

This book smacks of propaganda. For instance, on the first page the author says: "No doubt most of the things forbidden by the penal code are such as are injurious to the organized society of the time and place . . ." On the following page he says: ". . . it does not always follow that the violator of the law is not a person of higher type than the majority who are directly and indirectly responsible for the law." In a spirit of open-mindedness one would like to hear something about this "higher type." The classification of men as to "types" is of extraordinary difficulty. Even amongst the so-called character analysts there would undoubtedly be wide differences of opinion as to the grouping of men in a series from the extreme of high type to the other limit. Most people are accustomed to think that a man reveals a high type of character when, even though he is personally convinced of the rightness of his program, he steps aside and withholds his hand from overt action until such time as he and others who share his conviction can obtain something like a public approval of the program and its method of execution. This is the unselfish Golden Rule-like attitude. If we were not living with other people it would not be necessary and there would not be a Golden Rule. Of course, the reply at this point is that the rule ought to work both ways—and so it ought, as fully as practicable in every relation. But we are bound to frown upon the person who *overly* pushes himself in against our customary rights and privileges even though he is doing nothing more serious than to plant himself ahead of us in the line before the stamp window at the post office. If he persists he is likely to be restrained by an officer of the law or by a committee of the whole. In view of the odds of opinion against him his cue is to take a position at the rear of the line or by argument and persuasion so to alter opinion as to allow him to slip into the line wherever he will. It is idle to urge that the cards are all stacked against this man. The stacking represents an accumulation of public opinion, and according, as the facts are brought before us, that opinion will be confirmed or altered and with it the custom in which it is expressed.

The mass of people believe that unselfish conformity, while urging a change of opinion, is one of the most distinct indices of a character of "high type." The author's statement to the effect that some or many so-called criminals are of "higher type" than some law-makers may be altogether too true, but in the interest of clear-thinking and of arrival in the neighborhood of the truth the author ought to discuss the meaning of the phrase and the implication of the statement as a whole.

The chapter on "Remedies" contains nothing original. The author places his approval upon such "*progressive*," measures for the treat-

ment of criminals as are now most in vogue and urges their imprisonment.

Northwestern University.

ROBERT H. GAULT.

EUGENICAL STERILIZATION IN THE UNITED STATES. A Report of the Psychopathic Laboratory of the Municipal Court of Chicago. By *Harry H. Laughlin*, Chicago, 1922. Pp. 500.

"Eugenical Sterilization in the United States" is the title of a volume just issued by the Psychopathic Laboratory of the Municipal Court of Chicago. The subject matter of this book has afforded a new and expanding domain for research and compilation which has been successfully and courageously dealt with. The authorship of the book is ascribed to Harry Hamilton Laughlin, D. Sc. of the Eugenics Record Office, Carnegie Institution, also of Cold Spring Harbor, Long Island, N. Y., and Eugenics Associate of the Psychopathic Laboratory of the Municipal Court of Chicago. Judge Harry Olson, Chief Justice of the Municipal Court, in his introduction to the volume, expresses confidence that Dr. Laughlin has rendered the nation a signal service in the preparation of the work. Concluding his introduction, he points out that the Municipal Court publishes the matter which Dr. Laughlin has prepared as a desirable contribution to the cause of crime prevention. He explains that segregation of defectives is necessary, even though sterilization be invoked. Sterilization, he points out, would protect future generations, while segregation protects the present as well. In fifteen states, up to the present time, experiments have been made with sterilization, Judge Olson explains, and the volume which he introduces contains the laws, court decisions, and legal opinions made public in each of the states having eugenical policies. Dr. Laughlin's preface announces that the work is especially designed for law-makers, judges, and others who officially deal with criminals, and at the same time, for publicists who are self-devoted to the welfare of the state and humanity. Eugenical sterilization, it is made clear, is designed to effectuate the incapacitation to breed their kind of those conclusively established to be unfit. To the extent which eugenical sterilization is carried out it goes to keep the life-stream pure and protect oncoming generations from polluting defects. Intimately connected with sterilization, the writer points out should be such segregation of defectives as will protect the existing public from outbreaking lawlessness by potential criminals.

In general it is apparent that Dr. Laughlin's work is the most comprehensive treatment of eugenical sterilization yet published in this country or Europe and will be in worldwide demand because of its data and the surgical information which its numerous plates affords, as well as because it is a complete resume and prognosis of present and prospective eugenic advancement.

The table of contents of the book reveals its scope and character. Following are the subtitles of the several chapters:

I. Chronological list of laws, amendments, executive vetoes, repeals, official legal opinions, board orders and court decisions relating to eugenical sterilization previous to January 1, 1922.

II. Analysis by states, of sterilization laws enacted prior to January 1, 1922.

III. Texts and legislative records of the eugenical sterilization laws.

IV. Statistical and descriptive summary of eugenical sterilization in the several states.

V. Analysis of eugenical sterilization laws by subject.

VI. Analytical outline of litigation growing out of the several eugenical sterilization statutes previous to January 1, 1922.

VII. Detailed review of litigation growing out of the several eugenical sterilization statutes.

VIII. Case and family histories of individual subjects of litigation growing out of the several eugenical sterilization laws.

IX. Legal opinion.

X. The right of the state to limit human reproduction in the interest of race betterment.

XI. Eugenical diagnosis.

XII. The anatomical and surgical aspects of eugenical sterilization.

XIII. The psychological and mental effects of sexual sterilization.

XIV. The legal biological and practical requirements for an effective eugenical sterilization law.

XV. Model eugenical sterilization law.

XVI. Explanatory comments on the model sterilization law.

XVII. Set of forms suggested for the use of the state eugenicist, the courts, private citizens, and custodial institutions in administering the model eugenical sterilization law.

Chapter I is simply a chronological record of the action of the several states in matters relating to eugenic sterilization.

The states in which action has been taken being as follows: Indiana, Iowa, North Dakota, Nebraska, Washington, New Jersey, Kansas, South Dakota, Connecticut, New York, Wisconsin, California, Nevada, Michigan, Oregon.

Chapter II succinctly presents the action taken in the states enumerated and discloses the present legal status of eugenical sterilization therein.

Chapter III presents the texts of the laws in the several states together with other official action in the making of laws.

Chapter IV presents in detail much of the sterilization work done in the fifteen states and concludes with a summary showing the number of sterilizing operations performed from the beginning of legal operations to January 1, 1921, to have been, males, 1,853; females, 1,380.

Chapter V goes deeply and learnedly into the requirements of the sterilization statutes and explains the motive of heredity, the therapeutic and the punitive motives of the laws. This chapter is particu-

larly interesting and instructive to students of the problems of eugenics.

Chapter VI analyzes the litigation which in the several states has grown out of the efforts of public officials to enforce the eugenical sterilization laws on the statute books. It discloses the legal obstacles that have been and yet may be encountered in bringing about systematic treatment of the unfit by sterilization.

Chapter VII covers 152 pages of the volume and presents in detail the legal and court proceedings in the courts of the several states and must prove to be of great value to law makers, judges, administrative officials and litigants and their counsel. Those who are devoting effort to promotion of eugenical sterilization will derive much encouragement from what it discloses.

Chapter VIII narrates the particular histories of individuals who have been subjected to the sterilization laws and gives the facts in relation to their forebears and their personal characteristics. This chapter must prove to be convincing to those who yet remain uncertain as to the wisdom and need of eugenical sterilization.

Chapter IX is made up of legal opinions in relation to the power of the state to enact and put into effect laws for the accomplishment of eugenical sterilization. In addition to learned and impartial opinions of leading lawyers of other states appears the opinion of Chief Justice Olson of the Municipal Court of Chicago. Judge Olson's opinion is of exceptional interest because of his twenty-six years' experience in the suppression of crime. His long and devoted experience to the subject entitles his views to great weight and prominence. Judge Olson's opinion is in the form of a response to Dr. Laughlin's letter of request for his legal opinion of the constitutionality of the model eugenics sterilization law which Dr. Laughlin has proposed. This model law, Judge Olson says, will undoubtedly be held to be constitutional, especially because it meets all of the objections raised against less studiously considered laws of some of the states. It guards against denial of due process of law, and, also, does not antagonize the constitutional principles which prohibit cruel and unusual punishments, attainder of blood, and duplication jeopardy and applies to all as well as those committed to custodial institutions. Judge Olson points out that: "the due process of law clause in the Constitution is not infringed by the model act, which provides for a hearing in court with due notice, the right of a jury trial and the right of appeal."

"The model act has no element of punishment in it, and thus the question of the constitutional inhibition against cruel and unusual punishment will not arise."

"The elimination of the punitive element in the model act also removes the possibility of a question arising under a bill of attainder, twice in jeopardy provisions, or the ex post facto clause of the Constitution."

"The model act places the burden of proof upon the state to establish that the person designated for sterilization is a menace to the next generation."

Judge Olson expresses himself as desiring to discuss the need for eugenical sterilization rather than the legality of it. He says:

"If the science of eugenics has so far advanced, as seems to be the fact, that it can be determined that certain individuals are afflicted with physical, nervous and mental disorders that are hereditary and will appear in the next or later generations, and threaten the safety of society, and that by a simple and practically painless operation, such persons can be rendered sterile, then there can be no question but that the legislation contemplated by the model act will be an effective protection to future generations, and will be in furtherance of a sound public policy."

Emphasizing the right and duty of self-defense against degenerate stocks Judge Olson says that those who appreciate biological needs should devote themselves to furthering proper education thereon. He calls attention to the fact that America has been and is being made a dumping place for the unfit of other countries, a fact which has again and again been demonstrated by the Psychopathic Laboratory of the Municipal Court of Chicago.

Chapter X discusses at great length the right of the state to protect society by limiting reproduction by some of its members. It is pointed out that a state does not hesitate, in the interest of organized society, to take the life of an individual, and that this in modern practice is always in punishment for crime; but that crime is not the only harmful effect which an individual may have upon society. Crime it is true carries with it blameworthiness. But there are other factors of unfitness equally and more permanently destructive of the well-being of a nation based upon democratic policies and popular rule conscription for the common defense is pointed out as one of the instances in which the nation takes hold of the individual and for good of all puts him in jeopardy. Such treatment of the individual is not punitive, but is for the protection of the mass of society. Compulsory vaccination is cited as analogous to compulsory sterilization. The chapter contains a list of generally accepted legal obstacles to marriage—a list which is being increased rather than diminished.

Chapter XI on the subject of Eugenical Diagnosis is the most interesting and significant in the book. Eugenical diagnosis is not an exact science like mathematics, astronomy, or engineering, but is a biological science, the success of which depends in general upon the application of scientific principles, wide experience, and common sense. Specifically its operation depends upon the pedigree facts in a particular case, the knowledge of the rules governing the inheritance of the traits in question and the scientific skill with which the two foregoing factors are considered in connection with each other.

Chapter XII explains the anatomical and surgical effects of sterilization and contains comprehensive plates for information of surgeons. The principal types of surgical operations practiced to induce sterilization are fully plated and explained, together with the reproductive organisms of the male and female.

Chapter XIII deals with the effects mental and physical which result from sterilization and presents a number of case histories. Also

the effects of sterilization on glands other than those of reproduction.

Chapter XIV discusses the ordinary objections to sterilization laws, among which are accounted objections that such laws are contrary to the bill of rights, not adapted to their implied purpose, lack proper executive agencies not agreed on by sociologists, and encouraging of immorality. The objections are fully dealt with and completely answered in general and in detail.

Chapter XV presents a draft of what is regarded as a model eugenical sterilization law suitable for state legislatures to enact. A copy of this model law is appended.

Chapter XVI is made up of comment on, and explanations of, the details of the model law and the effects and application of it; also a detailance of those who would come under its operation.

Chapter XVII explains the forms which would be required by the state eugenicist in the administration of the model law; and, also, those that would be needed by the courts, the public, and custodial institutions.

GEORGE W. WEBER.

THE FEDERAL COURTS AND THE DELINQUENT CHILD: A Study of the Methods of Dealing with Children Who Have Violated Federal Laws. By *Ruth Bloodgood*. Children's Bureau Publication No. 103, Washington, 1922. Pp. 71.

The relatively small mass of persons coming into direct contact with federal agencies and legislation, and the lack of specific representation of these persons have brought it about that federal procedure, which should set standards for the states, often lags. This is true of the status of juvenile offenders, who, except for legal evasions due to warmhearted commonsense, are still in a nineteenth century status under federal law.

Procedure is based on equal responsibility and punishment of children as criminals. Delays are frequent, and there is no provision for social investigation, proper detention, or probation. Jail detention is common. This is intolerable.

Some attorneys and courts dodge the issue by informal treatment or nominal punishment, or by turning the case over to local courts on a minor charge. Some children are sent to the National Training Schools at Washington. Others are farmed out, where state laws permit, to local reformatories. (There are certain dangers in the latter process, at least if the prisoners go to lowest bidders.) Federal courts are thus handicapped in their facilities for doing real justice in juvenile cases.

The aggregate number involved is 1,000 annually, under 18. The majority are violators of postal laws. Specific data are given for the several districts and institutions.

"Two possibilities suggest themselves for providing a procedure better adapted to the handling of federal cases involving children: First, a definite system of reference to state courts, preferably at the beginning of the case; and second, the establishment of a federal pro-

bation system, accompanied by certain other modifications of the federal procedure in children's cases, so that an informal chancery procedure will be possible."

"It is probable . . . that the simplest, most practicable, and least expensive plan for the proper handling of children's cases involving violations of federal laws would be the first suggested . . . the development of a definite system of reference to state courts, at least for certain types of federal cases involving children."

Northwestern University.

T. D. ELIOT.

SIGNS OF SANITY AND THE PRINCIPLES OF MENTAL HYGIENE. By *Stewart Paton, M. D.* New York: Scribner's, 1922. Pp. 241. \$1.50.

The author aims to show in this volume how human conduct may be controlled by better breeding and by intelligent direction in the use and development of hereditary endowments.

". . . human intelligence, intelligently directed by those who understand human beings, is probably still equal to the task of saving human institutions."

It is interesting to observe in volumes like this, how common sense with respect to social behavior and mental health is supported by the findings of the psychiatrists.

"Any living organism if it responds to stimulation by well-graded and appropriate reactions, exhibits the fundamental organization of the sound body that forms the necessary basis for the unified, harmonious, sound mind."

Northwestern University.

ROBERT H. GAULT.

CASE STUDIES FROM THE JUDGE BAKER FOUNDATION, SERIES I. By *William Healy, M. D.*, and *Augusta Bronner, Ph. D.* Boston, 1923.

This is an important series of studies of cases that have come before the Judge Baker Foundation in Boston through the instrumentality of parents, the Juvenile Court and social agencies. The studies in the form in which they are appearing will be extraordinarily useful to college and university students and teachers, to general readers and social workers.

All people of common sense who are interested in juvenile delinquents as individuals and in the large social problems of which they *as individuals* are but very small parts have for a long time very keenly felt the inadequacy of reports of intelligence quotients and almost equally abbreviated statements regarding health and environment. We have sometimes wondered whether such statements mean anything constructive even to the experts themselves—so complex a thing is the human individual.

These studies, the publication of which has been made possible by the Commonwealth Fund of New York City, are wide departures, in their setting forth, from the extreme of brevity. The data are comprehensive. They are accompanied by enlightening discussions by the

Directors of the Foundation and followed by a summary of the conference of the staff of the Foundation and a final comment. Each of these items is brought down to approximately a page.

Each case study is set out in a separate pamphlet, the first of which is comprised in 42 pages. The left hand page always includes data relating to the case and the right hand page the Directors' discussion, excepting the last pages, beginning with 35, which include, without regard to right and left, the "Summary of Staff Conference," the "Subsequent History" and the "Final Comment."

The following topics will show the manner of classification of the data pertaining to Case 1:

INTRODUCTORY STATEMENT; STUDY OF THE BACKGROUND: Family; Father; Father's Family; Mother; Mother's Family; DEVELOPMENTAL HISTORY; HOME AND NEIGHBORHOOD CONDITIONS; HOME INFLUENCES; HABITS AND INTERESTS; SCHOOL HISTORY; COURT HISTORY; FOSTER HOMES; STUDY OF THE INDIVIDUAL—PHYSICAL; MENTAL—*Results on Psychological Examinations; Mental Balance; Personality Traits*; BOY'S OWN STORY; SUMMARY OF STAFF CONFERENCE (summarizing in one page the preceding data and including prognosis and recommendations); SUBSEQUENT HISTORY (including physical and mental data and excerpts from autobiography); FINAL COMMENT.

The reader may obtain a clearer idea of the subject matter and presentation of these studies from the following quotations from the study of Case 1:

"Gregorius Mantos; 16 yrs., 2 mos.; Greek parentage; born in Greece; in U. S. 7 yrs.

INTRODUCTORY STATEMENT

"(Oct., 1918). For the last two years Gregory had been in foster homes carefully selected and believed to be suited to his needs. From each of the four homes in which he had lived for varying periods there came, after a time, the same complaints and demands that he be removed at once. Too impudent to be tolerated, too conceited to be amenable to ordinary family life, he was lazy, hot-tempered, generally dirty, and he was forever asserting the superiority of his own race and of communistic ideas.

"When, two years earlier, the court had asked that he be placed out, Gregory already had quite a career of delinquency. At eleven years he first appeared in court for petty larceny, and there followed repeated appearances for begging, stealing, staying away from home for days at a time, truancy, petty burglary, and receiving stolen goods. All this, in spite of active probation, had continued over a period of three years.

"The child-placing agency which had charge of Gregory, discouraged by his general behavior tendencies rather than by any repetition of his former offenses, desired a study of him. They wondered whether he were mentally abnormal, or whether possibly their homes

had been unsuited to his needs, or whether he ought not to be returned to the court as a failure and sent to a boys' correctional institution."

The foregoing appears on the left hand at the beginning of the pamphlet and the following "discussion" on the adjacent right hand page:

"We have little sympathy with the idea that an individual or his problem can be really known through 'an examination' and a labeling process—it requires, rather, an *examination into* what makes him what he is and what makes him do what he does. It can only be lack of experience in studying life careers that leads anyone to believe otherwise, to believe that the individual's problems in conduct and education can really be appreciated or solved by looking him over physically and giving him some intelligence tests. There is always interplay between the individual and his environment, physical and mental, present and past. From the facts provided by knowledge of the background we get indicators or clues to elements which may possibly be explanatory of the active or passive components in his behavior trends, creating urges and developing inhibitions. One cannot completely study from the standpoint of life's functionings any sort of a biological specimen apart from molding outside influences. That is the weakness of a bare laboratory method, of 'examining' an individual.

"Even though an agency has dealt with the family, it is our experience that its statement of facts will not adequately take the place of a personal interview with parents, because scientific study has very different points of emphasis. Important whole groups of facts are not taken account of in any ordinary investigation; for example, the powerful but formative influences of mental life that are always active in home and other associations beneath the surface of observable exteriors."

On the next page the following data concerning the father are to be found:

"*Father*: 61 years old; born in Thessaly. A rather picturesque personage, small in stature, poorly but very neatly dressed, quiet, dignified, very courteous. He states that he has always been healthy, except for rheumatism in recent years and denies any excessive drinking. He graduated from an elementary school in Greece, has always been a great reader, especially of history, and has been much interested in politics. He gave an account of his own turbulent youth and of how he spent some time in prison abroad for speaking against the country. When he was young, he, too, was rebellious.

"He first came to the U. S. when he was 30 years old and worked at his trade, which was that of a marble cutter. After some years he returned to his native land and was married. He remained about two years, during which time his first two children were born. Then he came again to this country, bringing his family, but in a few years he once more returned to Greece. Shortly afterwards his wife died. Then, leaving the two older children in the care of relatives, he brought his youngest child, 2 years old, to America, thinking he could earn a better living here. He did not do well, and leaving the little

girl in charge of the State Board of Charity, he went back. In a couple of years he emigrated finally with his older children. In all the years since then he has conducted in his little lodgings a business of repairing broken household articles, statues, ornaments, china, etc. He apparently drifted into this through his earlier work with stone cutting and repairing marble.

"Several have been impressed by the father's apparent sincerity and honesty, and these qualities, together with his cleanliness, beyond what might be expected of him, and his good manners make him generally well thought of. He speaks broken English, but we have been several times informed that his Greek is very unusual in its purity and in its literary qualities. He has maintained his interest in public affairs and regularly reads a daily newspaper printed in his native language. He has long since become an American citizen and regularly votes the Republican ticket."

On the adjacent right hand page is the following discussion:

"This man is clearly much better educated than the average immigrant, though he has never been even moderately successful. He has never been earning at all up to the level of his intelligence or his good character traits, both of which should have been assets. While we know little of his special capacities, we do know, of course, that he lacks forcefulness. One wonders whether with proper introduction and organization of immigrants into our community life there might not be more advantageous adaptations. The story as it proceeds offers a commentary on the expensiveness of neglecting to fit the immigrant better into the new conditions. Both the immigrant and the rest of us would gain vastly by bringing about a more sensible adjustment than this case represents.

"It appears suggestive for ultimate prognosis in this boy's case that the father, though so aggressive in his younger days, is mild now.

"A man with a little learning, especially in political theory, unsuccessful, harassed by poverty, without complete family ties, already in trouble in the old country because of his anti-governmental views might well be thought of as anarchistic material. It is interesting that this man somehow changed. Perhaps American democracy is nearer his ideals; perhaps it is his advancing age with its natural conservatism.

"His nationality has little to do with matters of radical political beliefs; aggressive malcontents with government are found among many nationalities.

"There is nothing very unusual about this man's trips back and forth, especially as he had no established business, and such journeyings are common among southern Europeans."

Northwestern University.

ROBERT H. GAULT.