

1942

## Current Notes

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## Current Notes

**Parole and Probation Conference**—Delegates from nine midwest states to the Ninth Annual Parole and Probation Conference gathered in Louisville on May 24th for a four day confab about mutual problems. About 300 parole and probation officers, together with a few prison officials, psychiatrists and welfare workers contributed their wisdom and experience to the program and discussions.

To this observer marked progress was apparent in expanded organizations and improved standards since the first conference, held in Chicago in 1933. Whereas only two or three of these states then had an organized parole set-up of respectable numbers, now all of them take seriously the systematic supervision of released prisoners. Though few of such state officers are under civil service, they seem eager to learn and anxious to profit by the experience of veterans in the field. Kentucky itself is one of the States which has recently established a staff of forty parole officers, charged not only with the supervision of parolees, but also with pre-sentence investigation of offenders being considered by the courts for conditional release. Exceptional understanding of the value of good parole legislation and administration was shown by Kentucky's Governor Keen Johnson, in his address at the conference dinner.

Harvey L. Long, Illinois Supervisor of Juvenile Delinquents, reminded the delegates of the two major causes of adolescent misbehavior—unsatisfied desires and unwholesome relationships. He expressed the belief that in looking at what is wrong in delinquents we are likely to overlook the good potentialities. Less of punishment and more of praise and the study of aptitudes is desired to develop the best. Mr. Victor Evjen of the Federal Probation office stated that, as a result of the war, as in England, we could look for "a sharp increase in juvenile delinquency, particularly of children 14 and under; a substantial increase in the group between 14 and 17, a very small jump in those 17 to 21, but little change in adult crime, unless possibly, a slight decrease." (See Mr. Evjen's and Mrs. Glueck's articles in this number of the JOURNAL).

"Gang Busters are gang makers" said Frank X. Reller, Chief Probation Officer of St. Louis, in placing a large burden of blame for crime increase on radio dramatizations. He said: "We have in our files fifty-six recent case studies of juvenile delinquency in which the offender emulated a radio program he had heard. There were three filling station robberies which followed the pattern of one particular program."

There was much discussion at the conference as to the acceptance of released prisoners in defense industries and in the armed forces. Lieut. Governor Harris of Missouri said, "It is ironical that regardless of how well qualified probationers or parolees are they are not accepted by such industries. A man who is good enough to fight for his country is good enough to work in defense industries."

As to military service Lieut. Col. Shattuck, Counsel for the Selective Service said: "The Army does not desire that the jails be emptied to supply fighting men. We have plenty of men without that for any Army we may build." Nevertheless he added: "The

Army's position is: If the State is willing to parole a man, thinking him fit for civil life, then the Army is willing to give him the same break." In Kentucky men with ten year sentences or less are released for military service or defense work. Five hundred have been qualified and 165 reported to induction boards. W. A. Frost, Commissioner of Public welfare said: "When these men return to their communities they will be ex-soldiers and not ex-convicts."—F. E. L.

The Supreme Court Invalidates Oklahoma's Sterilization Law—No. 782—October Term, 1941 (June 1, 1942). Mr. Justice Douglas delivered the opinion of the Court in the case of Jack T. Skinner, Petitioner vs. The State of Oklahoma, ex rel. MacQ. Williamson, Attorney General of the State of Oklahoma. (Following is an abstract of the opinion.)

The statute involved is Oklahoma's Habitual Criminal Sterilization Act. Okl. Stat. Ann. Tit. 57, §§ 171, *et seq.*; L. 1935, pp. 94 *et seq.* That Act defines an "habitual criminal" as a person who, having been convicted two or more times for crimes "amounting to felonies involving moral turpitude" either in an Oklahoma court or in a court of any other State, is thereafter convicted of such a felony in Oklahoma and is sentenced to a term of imprisonment in an Oklahoma penal institution. § 173. Machinery is provided for the institution by the Attorney General of a proceeding against such a person in the Oklahoma courts for a judgment that such person shall be rendered sexually sterile. §§ 176, 177. Notice, an opportunity to be heard, and the right to a jury trial are provided. §§ 177-181. The issues triable in such a proceeding are narrow and confined. If the court or jury finds that the defendant is an "habitual criminal" and that he "may be rendered sexually sterile without detriment to his or her general health," then the court "shall render judgment to the effect that said defendant be rendered sexually sterile" (§ 182) by the operation of vasectomy in case of a male and of salpingectomy in case of a female. § 174. Only one other provision of the Act is material here and that is § 195 which provides that "offenses arising out of the violation of the prohibitory laws, revenue acts, embezzlement, or political offenses, shall not come or be considered within the terms of this Act."

After three convictions, in 1936 the Attorney General instituted proceedings. Petitioner . . . challenged the Act as unconstitutional by reason of the Fourteenth Amendment. . . . The court instructed the jury that the crimes of which petitioner had been convicted were felonies involving moral turpitude and that the only question for the jury was whether the operation of vasectomy could be performed on petitioner without detriment to his general health. . . . A judgment directing that the operation be performed was affirmed by the Supreme Court of Oklahoma.—Okl. —, 115 P. 2d 123.

Several objections to the constitutionality of the Act have been pressed upon us. It is urged that the Act cannot be sustained as an exercise of the police power in view of the state of scientific knowledge respecting inheritability of criminal traits;<sup>1</sup> . . . that due

<sup>1</sup> Healy, *The Individual Delinquent* (1915), pp. 188-200; Sutherland, *Criminology* (1924), pp. 112-118, 621-622; Gillin, *Criminology and Penology* (1926), c. IX; Popenoe, *Sterilization and Criminality*, 53 Rep. Am. Bar Assoc. 575; Myerson et al., *Eugenical Sterilization* (1936), c. VIII; Landman, *Human Sterilization* (1932), c. IX; Summary of the Report of the American Neurological Association Committee for the Investigation of Sterilization, 1 Am. Journ. Med. Jur. 253 (1938).

process is lacking because under this Act, unlike the act<sup>2</sup> upheld in *Buck v. Bell*, 274 U. S. 200, the defendant is given no opportunity to be heard; see *Davis v. Berry*, 216 Fed. 413; *Williams v. Smith*, 190 Ind. 526; that the Act is penal in character and that the sterilization provided for is cruel and unusual punishment and violative of the Fourteenth Amendment. See *Davis v. Berry*, *supra*. Cf. *State v. Feilen*, 70 Wash. 65; *Mickle v. Henrichs*, 262 Fed. 687. . . . there is a feature of the Act which clearly condemns it. That is its failure to meet the requirements of the equal protection clause of the Fourteenth Amendment.

. . . In Oklahoma grand larceny is a felony. Okl. Stats. Ann. Tit. 21, §§ 1705, 5. Larceny is grand larceny when the property taken exceeds \$20 in value. *Id.* § 1704. Embezzlement is punishable "in the manner prescribed for feloniously stealing property of the value of that embezzled." *Id.* §1462. Hence he who embezzles property worth more than \$20 is guilty of a felony. A clerk who appropriates over \$20 from his employer's till (*id.* § 1456) and a stranger who steals the same amount are thus both guilty of felonies. If the latter repeats his act and is convicted three times, he may be sterilized. But the clerk is not subject to the pains and penalties of the Act no matter how large his embezzlements nor how frequent his convictions. A person who enters a chicken coop and steals chickens commits a felony (*id.* § 1719); and he may be sterilized if he is thrice convicted. If however, he is a bailee of the property and fraudulently appropriates it, he is an embezzler. *Id.* § 1455. Hence no matter how habitual his proclivities for embezzlement are and no matter how often his conviction, he may not be sterilized. Thus the nature of the two crimes is intrinsically the same and they are punishable in the same manner. . . .

. . . We are dealing here with legislation which involves one of the basic rights of man. Marriage and procreation are fundamental to the very existence and survival of the race. The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty. We mention these matters not to reexamine the scope of the police power of the States. We advert to them merely in emphasis of our view that strict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws. The guaranty of "equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo v. Hopkins*, 118 U. S. 356, 369. When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment. *Yick Wo v. Hopkins*, *supra*; *Gaines v. Canada*, 305 U. S. 337. Sterilization of those who

<sup>2</sup> And see *State v. Troutman*, 50 Ida. 673, 299 Pac. 668; Chamberlain, *Eugenics in Legislatures and Courts*, 15 *Am. Bar Ass. Journ.* 165; Castle, *The Law and Human Sterilization*, 53 *Rep. Am. Bar Assoc.*, 556, 572; 2 *Bill of Rights Review* 54.

have thrice committed grand larceny with immunity for those who are embezzlers is a clear, pointed, unmistakable discrimination. Oklahoma makes no attempt to say that he who commits larceny by trespass or trick or fraud has biologically inheritable traits which he who commits embezzlement lacks. Oklahoma's line between larceny by fraud and embezzlement is determined, as we have noted, "with reference to the time when the fraudulent intent to convert the property to the taker's own use" arises. *Riley v. State, supra*, p. 189, 78 P. 2d p. 715. We have not the slightest basis for inferring that that line has any significance in eugenics nor that the inheritability of criminal traits follows the neat legal distinctions which the law has marked between those two offenses. In terms of fines and imprisonment the crimes of larceny and embezzlement rate the same under the Oklahoma code. Only when it comes to sterilization are the pains and penalties of the law different. The equal protection clause would indeed be a formula of empty words if such conspicuously artificial lines could be drawn. See *Smith v. Wayne Probate Judge*, 231 Mich. 409, 420-421. In *Buck v. Bell, supra*, the Virginia statute was upheld though it applied only to feeble-minded persons in institutions of the State. But it was pointed out that "so far as the operations enable those who otherwise must be kept confined to be returned to the world, and thus open the asylum to others, the equality aimed at will be more nearly reached." 274 U. S. p. 208. Here there is no such saving feature. Embezzlers are forever free. Those who steal or take in other ways are not. If such a classification were permitted, the technical common law concept of a "trespass" (Bishop, *Criminal Law* (9th ed.) vol. 1, §§ 566, 567) based on distinctions which are "very largely dependent upon history for explanation" (Holmes, *The Common Law*, p. 73) could readily become a rule of human genetics.

It is true that the Act has a broad severability clause.<sup>3</sup> But we will not endeavor to determine whether its application would solve the equal protection difficulty. The Supreme Court of Oklahoma sustained the Act without reference to the severability clause. We have therefore a situation where the Act as construed and applied to petitioner is allowed to perpetuate the discrimination which we have found to be fatal. . . . *Reversed*.

Mr. Chief Justice Stone concurred but was not "persuaded that we are aided . . . by recourse to the equal protection clause."

Mr. Justice Jackson concurred but disagreed with the opinions of the Chief Justice and of Mr. Justice Douglas in so far as each rejects or minimizes the grounds taken by the other.

Human Development in Wartime—A Conference on this subject was held at Ohio State University in Columbus, June 29 to July 3, under the auspices of the Institute on Human Development in the University.

<sup>3</sup> Sec. 194 provides:

"If any section, sub-section, paragraph, sentence, clause or phrase of this Act shall be declared unconstitutional, or void for any other reason by any court of final jurisdiction, such fact shall not in any manner invalidate or affect any other or the remaining portions of this Act, but the same shall continue in full force and effect. The Legislature hereby declares that it would have passed this Act, and each section, sub-section, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sub-sections, paragraphs, sentences, clauses or phrases be declared unconstitutional."

"War and the world-wide crisis intensify the need for constructive measures to conserve and develop human resources. There must immediately be a mobilization and a training of human abilities to meet emergency needs. Plans must be made to protect developing children during these hazardous times. And above all, there must be investigation of the potentialities of human development for building a better world after the war. Persons and institutions qualified to study the impact of war on human personality must be responsible for proposing ways and means of coping with the forces which would otherwise deplete the nation's most precious and promising resources.

"The Graduate School of the Ohio State University accepted such responsibility by organizing the conference so that all who have concern with the conservation of human resources might have an opportunity to extend their knowledge and understanding of human development, and its relationship to the present emergency. Outstanding speakers presented the implications of such fields as psychology, sociology, education, psychiatry, medicine, and nutrition for war-time needs. Recent developments in the various specialized fields were presented in their interrelations and with reference to immediate and long-range plans for social action and for safeguarding the youth of our democracy from the hazards of insecurity, ill health, exploitation, and social neglect." (Adapted from the official announcement.)

The program of the Conference follows:

FIRST GENERAL SESSION: *Presiding*, Howard L. Bevis, President, The Ohio State University.

Introduction to the Conference on Human Development in War Time, Daniel C. Prescott, Ed.D., Head of the Division of Child Development of the American Council on Education, and Professor of Education, University of Chicago.

War-Caused Problems of the Family, Henry C. Schumacker, M.D., Director, Cleveland Guidance Center, Cleveland.

Is Delinquency Inevitable? Willard C. Olson, Ph.D., Director of Research in Child Development, and Professor of Educational Psychology, University of Michigan.

SECOND GENERAL SESSION: *Presiding*, Alpheus W. Smith, Dean of the Graduate School, The Ohio State University.

Disease, War and Human Development, C. A. Mills, M.D., Professor of Experimental Medicine, University of Cincinnati.

Human Development through Nutrition, Alice A. Smith, Nutritionist, Cleveland Health Council.

#### ORGANIZATION MEETING OF SPECIAL INTEREST GROUPS

1. Nutrition, Hughina McKay, Professor of Home Economics, The Ohio State University.

2. Health Education, Paul E. Landis, Department of Education, State of Ohio.

3. Adult Education, Herschel W. Nisonger, Professor of Adult Education, The Ohio State University.

4. Education and Citizenship, Lloyd A. Cook, Associate Professor of Sociology, The Ohio State University.

5. Family Life and Parent Education, Amalie K. Nelson, Family Relations Committee, Y.W.C.A., Columbus.

6. Youth Guidance, Ross L. Mooney, Assistant Professor of Education, Bureau of Educational Research, The Ohio State University.

7. Recreation, Ann Paterson, Instructor in Health Education, Summer Session, The Ohio State University.

8. Reading, Wilda Rosebrook, Associate Professor of Educational Psychology, The Ohio State University.

9. Teacher Education, Sidney L. Pressey, Professor of Psychology, The Ohio State University.

10. Community Resources, John Hall, Council of Social Agencies, Columbus.

11. Child Development, Winona Morgan, Associate Professor of Home Economics, The Ohio State University.

**Psychotherapy in Certain Types of Criminals**—At the meeting of the American Psychiatric Association in Boston in May Dr. Gregory Zilboorg of New York City read a paper under the above title in which he urged a redefinition of some of the terms that are in current use and a revamping of the psychiatrist's relations to his patients who are prisoners. The following has been abstracted from his address:

"Quite imperceptibly and unwittingly, we have drifted into silently accepting the definition of the criminal as given us by the law and not by psychiatry. There may be no objection to our accepting the legal definition, provided we keep always in mind that the definition is not ours. Our attitude toward the criminal should be made our own, regardless of the attitude of the law." He further emphasizes that the psychotherapist cannot be an ally of the law: "He need not and should not necessarily be an opponent of the law, but he cannot be an active proponent; he must treat the law itself, first, merely as a social phenomenon, and second, as a condition, a circumstance, a potent factor which the individual called the criminal has to face and meet and handle psychologically, and to which he must adjust himself. . . . No true therapeutic situation is really possible without the doctor's detached observational attitude toward these matters. Moreover, the doctor vitiates the therapeutic situation in all respects unless his relationship to the prisoner or the paroled criminal is totally free from any administrative authority. A doctor who has official administrative control over the patient has almost insurmountable difficulties in his therapeutic efforts. More than that, a doctor who has control over a prisoner, and who is an official part of the prison machinery administering justice, is, in my opinion, almost totally unable to exercise any true therapeutic influence on the prisoner."

Zilboorg concludes thus: "Our prison system would do well if outsiders who have nothing whatsoever to do with the prison system would be permitted to undertake systematic individual psychotherapy within the prisons," and secondly, "that psychiatry could be therapeutically most effective in criminal cases if it were organized for this purpose, independently of any agency of criminal law. Such an organization of therapists, acting under its own auspices or under the auspices of the public health authorities, could then come to a workable agreement with the prison authorities, under which the psychotherapist as a free agent could treat the prisoner as if the latter were also a free and self-respecting individual. Only in an atmosphere of this type of free therapeutic endeavor might

many an aspiration of forensic psychiatry for true reform come to fruition."

Dr. Zilboorg has an interesting point here. The prison psychiatric therapist, distinct from the classificationist, should be as independent of administrative duties as the prison chaplain who is answerable only to his Bishop or other church authority.

The progressive prison has its salaried general physician who does some administrative work. Time and again specialists are called in from "down town" for surgery, to treat eyes, ears, throats and noses and epidemics of dysentery and typhoid, e.g., they come in to *treat patients*. That they are really under the auspices of the State Board of Health is of no psychological consequence to the sick prisoner. The important point is that they are from the outside and that they carry no administrator's club.

Dr. Zilboorg's point is that many a prisoner needs a *treating* psychiatrist from the outside. Such patients are likely to be more responsive than the fellow with a bruised finger to the subtle atmosphere of the administrative physician.—(Ed.)

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Immaturity in Crime—Dr. Ralph S. Banay of the Ossining, N. Y. Classification Clinic read a paper before the American Psychiatric Association meeting in Boston, May 18-22, 1942, in which he described how he applied the Kent-Rosanoff Word Association Test to a criminal group of 100 men. It brought to light many constitutional symptoms found in pre-adolescent children and clinical manifestations indicative of emotional immaturity. Banay states: "The group, compared with the controls, stands between the normal and the insane. It is nearest to the defective children's reaction. The association test indicated a lack of mobility of attention, a great delay in responses in the presence of hidden conflicts charged with emotional force." The paper was read before the Section on Forensic Psychiatry.

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Pennsylvania Parole Board Appointed—Four of the five members of the Pennsylvania Board of Parole, created by the 1941 legislature, were appointed by Governor Arthur H. James on April 15, 1942. The governor had previously requested the legislature to postpone the operation of the statute but this request was not granted. The new law provided that the appointment should be made "on or before" October 1, 1941. In all other respects the statute sets forth that it should be effective on January 1, 1942.

The four members named by Governor James, with the consent of two-thirds of all the members of the Senate, are as follows:

Dr. Louis N. Robinson, a trustee of Eastern State Penitentiary, chairman.

Dr. Mary Belle Harris, Lewisburg. She is former superintendent of the Federal Industrial Institution for Women at Alderson, W. Va.

Dr. Dallas W. Armstrong of Newville, former president of Lock Haven State Teachers College.

John F. Haggerty, Pittsburgh, Assistant District Attorney.

None of the appointees has been active in politics. Dr. Robinson is a Democrat. The others are Republicans. Dr. Robinson will receive \$10,500 a year as chairman and the other members \$10,000

each. An appropriation of \$400,000 will support the system until the current biennium ends, May 31, 1943.

The new board will have wide hiring powers, beginning with a state director of parole at \$7,500 a year and ten district office supervisors at \$5,000 each. In addition, a board secretary is to be chosen at an unstated salary and scores of clerks and investigators will be needed.

All appointments made by the board, except that of its secretary, must be made from lists compiled by it after free competitive examinations have been held.

The board has exclusive power "to parole and reparole, commit and recommit" and to discharge from parole all persons sentenced to any state or county prison except those sentenced for a maximum period of less than two years, as to which latter the court has the paroling power. Persons sentenced to death or life imprisonment cannot be paroled by the board. Paroles may not be granted before the expiration of the minimum term fixed by the court, or in a commuted sentence, by the Pardon Board.

The board has exclusive power to supervise any probationer when the court specifically so orders. The new statute broadens the court's power to grant probation by eliminating all but one crime—murder in the first degree—from the list of offenses for which probation may not be granted. The new law also omits the former provision that only defendants not previously "imprisoned for crime" are eligible for probation.

—From *Probation* April, 1942

**Scientific and Technical Societies and Institutions of the U. S. and Canada**  
—The National Research Council has recently issued the fourth edition of a Handbook of Scientific and Technical Societies and Institutions of the United States and Canada, (N. R. C. Bulletin No. 106, January, 1942; 389 pages). The United States section contains information on 1,269 societies, associations, and similar organizations in the natural sciences and related fields that contribute to the advancement of knowledge through their meetings, publications, and other resources. There are also included a number of more general organizations and special institutions supporting scientific research, as well as the constituent or affiliated societies of the three other national research councils of the United States—the American Council of Learned Societies, the American Council on Education, and the Social Science Research Council. The Canadian section, compiled through the cooperation of the National Research Council of Canada, contains informations concerning 143 organizations.

The Handbook gives, in most cases, the President and Secretary of the organization; the history, object, membership, meetings, research funds, and serial publications. A subject index to each section (United States and Canadian) includes a classification of the activities, funds, periodicals, and changes of name as reported in the history. The fourth edition has a personnel index also for each section.

The information for the fourth edition was furnished during the period from July 1, 1941, to January 15, 1942, by the organizations. The Handbook is for sale by the National Research Council, 2101 Constitution Avenue, Washington, D. C.