BOOK REVIEWS


This is the second volume of a series which will, when completed, be in five volumes, and will comprise "a comparative survey of the family laws of the forty-eight states, Alaska, the District of Columbia, and Hawaii." Volume I, covering the subject of Marriage, was reviewed in these pages last year.¹

The unique value of this volume, as of Volume I, is that it has searched out and tabulated, in easily accessible form, the statutory law of the states relating to divorce. From what the reviewer knows of the contents of the statutes relating to divorce of one or two jurisdictions, and how well some parts of those statutes have been concealed in the general mass of the statutes, he believes that the writer of this book has missed practically nothing, and that the picture here given of the statute law is almost perfect. At any rate it is a remarkable performance in compilation, and must make this book the beginning point for any person who sets out to state the American law of divorce as it is, or to attempt to propose useful changes in the law.

The large degree of uniformity in the divorce law of the states, in spite of the verbal differences in the statutes which make much of the legislation look almost accidental, becomes apparent from this survey. On the other hand, the actual differences which do exist show up plainly. For example, if this book had been available to the draftsmen of the Pennsylvania revision of 1929, they could not have failed to see that Pennsylvania stood alone in denying alimony in case of absolute divorce, except where the wife is insane. This might have induced cogitation, and they might have learned what every divorce lawyer knows, that this denial is a first aid to collusion. The wife threatens suit for divorce a mensa, in which she can get alimony. The husband, if he is to pay, wants freedom. He counters with an offer of a settlement, if the wife will take an absolute divorce. The materials are here for determining how much give and take would be required to hit upon a compromise out of which might be made a uniform divorce statute which would have a chance of wide adoption.

The enormous variety of the statutes makes it difficult to bring them within any possible scheme of tabulation. For example, in the table on p. 61, under the heading "Insanity as Ground for Absolute Divorce", is listed Pennsylvania. In fact, of course, insanity is not such a ground in Pennsylvania, and that fact was discovered and pointed out by the writer in the footnote. The statute is only a regulation of procedure in cases where the respondent, being guilty of some other offense which is ground for divorce, is insane at the time of suit. That means that the statute does not belong where it is tabulated, but it should appear somewhere, and there was nowhere else to fit it into the scheme. What a blessing footnotes are! It would have been enlightening to have had Professor Vernier's comment as to the relevancy of the requirement that the defendant be a hopeless lunatic, when his lunacy is not a ground for divorce. The statute is probably an example of the accidental way in which draftsmen of statutes have picked up odd bits of statutes from one state and another and put them together without much care as to the fit.

It would have been advisable to have given, at the beginning of the book, an historical introduction to the subject of American divorce law. If it had been pointed out that there was no judicial absolute divorce in England until 1857, and that American divorce statutes, enacted much earlier than that, prob-

¹ Book Review (1932) 80 U. of Pa. L. Rev. 779, by the same reviewer.—Ed.
ably derived from the Scotch statute, but that the English Ecclesiastical Courts called their annulment divorce a vinculo matrimonii, it would have made tables such as those on p. 39, Impotence, and on p. 70, Fraud, Duress, Relationship, and Nonage, as grounds for absolute divorce, more understandable. There may be in at least some of the states, a question as to whether some of these "divorces", based upon grounds such as those mentioned above, which were grounds for annulment in the Ecclesiastical Courts, may not have the ab initio effect of the Ecclesiastical Court divorce a vinculo matrimonii. There may be also a question as to whether the old power to annul may not co-exist with the power to grant a divorce, where the ground is one which was an Ecclesiastical Court ground for annulment. To stimulate other students to a further study of these problems, as by tracing the origins and history of the various statutes, this background ought to be kept in sight of the readers of books on divorce.

This reviewer feels, with reference to this volume, as he did with reference to the volume on Marriage, a personal obligation to the author for having made available materials practically inaccessible to one whose time is not unlimited, or whose provision for assistance in research is limited. It is unfortunate that there is not more of interpretation and criticism by the author, but that, of course, is not the main purpose of the work. The readers of the two volumes of the series now available will await with interest the forthcoming volume on Husband and Wife, as to which the legal picture has so greatly changed in modern times, and on Parent and Child, as to which there is comparatively little statutory law.

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The scope of this volume is much more restricted than the title might suggest. The writer deals "exclusively with the obligations of states to arbitrate their disputes". No attempt is made to treat of the problems involved in the process of arbitration, except as they are occasionally involved in the discussion of the treaties and treaty negotiations, nor to evaluate the results. "Arbitration" is used broadly to include all definitive settlements of disputes "by persons or organizations chosen by the parties", regardless of whether or not they are decided according to law. Nor is the term differentiated from adjudication, thus bringing within its purview decisions of the Permanent Court of International Justice. "Compulsory" arbitrations are taken to include all arbitrations resulting from an obligation, assumed by the states in advance, to settle all or certain types of disputes by this means. It is pointed out, however, that the existence of a permanent court, whose jurisdiction to receive certain cases on unilateral application is recognized, "tends to change the definition of compulsory arbitration to cover only such cases" (p. 207). In certain instances (see p. 166) the writer herself apparently adopts this definition.

The truth of the matter is, as the treaties discussed abundantly show, that there is no sharp distinction between "automatic" and "non-automatic" compulsory jurisdiction. There are innumerable gradations between treaties of the Anglo-French type, which apply only to differences of a "legal nature", and specifically reserve the broad and indefinite categories of questions affecting "vital interests", "independence", and "honor", and which require a special agreement or compromis preceding each arbitration, thus allowing the parties to interpret the above terms for themselves, and, at the other extreme, treaties in explicit terms, providing for arbitration by a permanent court, at the instance of either party, the terms of the treaty to be subject to interpretation by the court.
The author's treatment of the subject is chiefly historical. A decided tendency is noted for treaties to become increasingly specific with regard to reservations, and in enumerating matters definitely not reserved. Similarly in an increasing number of cases there is provision for semi-automatic and even completely automatic application of the arbitral procedure upon application of one party. These tendencies, of course, have been greatly facilitated by the existence of a permanent international court as well as by the Optional Clause and the formula in the statute of the World Court which assists in the definition of "justiciable" disputes.

On account of the limited scope of the volume many of the most significant questions involved in the subject of compulsory judicial settlement of disputes are left untouched. The problem, for instance, of the extent to which the incompleteness of international law is a limitation on wider dependence upon judicial settlement does not receive thorough treatment. It is clear from the attitude of states in negotiating treaties, however, that lack of an adequate means of changing the law is a much greater hindrance than is actual non-existence of law.

There are two parts to the book, one dealing with the pre-War period, the other with the years since the War. Each includes a chapter on the "practice" of international arbitration, which does little more than give an idea of the number, type, and importance of the questions arbitrated in the respective periods. The volume includes many compilations of treaties of various types, and is implemented by a treaty index.

J. Roland Pennock.

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The essays in this book have all appeared in various journals here and abroad during the last half dozen years. Though they deal with a considerable variety of subjects, Mr. Laski suggests that "they are brought into something like unity by the fact that they express a general attitude". On the surface Mr. Laski's chief contribution to political thought would seem to be found in his vigorous assaults upon the theory of state sovereignty. In reality, even if his views on this subject are untenable, we should be indebted to him for an attitude towards law and politics without which our thinking would be poorer. The descriptive word we want for this attitude is difficult to lay one's hand upon. The word "liberal" which awakens nostalgic memories in those who know their Mill has of late been bandied about and applied to such disparate views and to such strange figures in modern politics as to have lost all meaning. It is not unfair, I think, to regard Mr. Laski as the present leader—in succession to Maitland and Figgis—of a propaganda having as its objective the creation of a political theory adequate to explain an infinitely complex society, which is still, however, in bondage to unexamined tradition. Hence he sees in every movement against the established order a potential contribution to the freeing of men's minds for the construction of a more realistic theory of law and the state.

This point of view is illustrated in the essay on the Age of Reason which shows that the superficially contradictory views of rationalist and romanticist furnished the necessary force of demolition; that on Diderot shows its subject as laboring prodigiously to unmask every fraud tending to obscure the solvent forces at work in the eighteenth century; while that on the Socialist Tradition in the French Revolution shows that Babeuf and his followers in the years 1789-1796 were, of all the pamphleteers and agitators of a troubled era, the
legitimate ancestors of Marx on the ideological side and of Lenin on the side of tactics. So, likewise, after an admirable survey of the issues involved, he condemn bicameralism (in England at least), asserting that second chambers are “in fact, part of the general tactic of conservatism”. His analysis of the personnel of the British cabinet between 1801 and 1924 demonstrates that “we are still living by what Matthew Arnold called our religion of inequality” and leads him to conclude that the aristocracy so long in the seats of power no longer possesses the ability to see the implication of the new ideas which “are changing the perspective of men’s habits of thought” and must give way to “those sections of society which have most to lose” by the introduction and acceptance of such ideas (201). Finally, in the essay on The State in the New Social Order, after postulating that the State exists, or should exist, to give each individual access to the good life, and that both our political institutions and our political science are based upon a system of property under which ownership has rights, it is suggested that the new system must be one in which rights will depend upon function, and that political science must erect a theory to support such a view while political invention must devise institutions to implement it. All this is, of course, familiar doctrine and one may accept it without closing one’s eyes to the enormous difficulties involved in securing such a well-nigh universal concept of social responsibility as will make easier the suggested equation of rights and functions.

The other essays are of perhaps more immediate value to the lawyer. That on The Political Philosophy of Justice Holmes emphasizes the sceptical and relativist temper of that jurist and his rejection of absolutist concepts. These matters, it seems to the reviewer, are worth emphasizing in view of the fact that the alleged “liberalism” of the Justice has become a veritable fad among those whose knowledge of his views is confined to his publicized dissents and who are ignorant of The Common Law and certain of the Collected Legal Papers. The views expressed in the paper on The Technique of Judicial Appointment will probably meet with the approval of most lawyers. Mr. Laski rejects both popular election and choice by the legislative body and is sceptical about leaving the matter to the unfettered decision of the executive. His constructive suggestion is that the executive be required to seek the advice of a small committee of the judges selected by themselves. Since judges in England are now chosen from the ranks of barristers, and the barristers to this day are to all intents and purposes a close corporation of the socially elite, the layman might well question whether men drawn from such a body can be expected to choose judges who are sceptical as to “the essential truth of economic individualism”.1

Mr. Laski’s theories as to the nature of the State and of law, which are restated in two essays on Law and the State and Justice and the Law, are too familiar to students to require extensive comment here. His rejection of the analytical jurist’s view of the nature of the State is based, it seems fair to say, upon an interpretation of that view which its own defenders would be quick to repudiate. “The obedience that counts”, writes Mr. Laski, “is the obedience of an actively consenting mind; and such a mind is concerned less with the source of law than with what the law proposes to do.” Formal jurisprudence, being concerned solely with the formulation of positive law, has indeed no quarrel with this, and it seems that when its critics have admitted that “in terms of its axioms neither its method nor its results can be denied”, they have shifted the controversy to entirely new ground. For, aside from the mystics and transcendentalists, the defenders of state sovereignty are agreed that the State before it issues its commands, is under a moral obligation to take into account the

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1 See the chapter on Professionalism in WALLAS, OUR SOCIAL HERITAGE (1921).
rightness of its proposed action. The assertion that law secures its binding force because of an end which commends itself to the individual conscience leads to two propositions. In the first place, the State, if it acts under a sense of moral obligation, is at least as likely to be “right” as the individual. In the second place, as a matter of convenience the individual can avoid the undoubted difficulties of constant revolt by doing his part to see that the holders of power act with a sense of responsibility. It is without doubt of the highest importance that a political theory, to be valuable, should square with the facts of political life, and the critics of the “orthodox” theory of sovereignty make us their debtors by stressing the infinite variety and richness of group life in the modern national community and the claims of such groups upon the loyalty of their members. But to suggest the substitution of the “actively consenting mind” for a single agency whose coordinating function is of admitted value, is to prescribe strong medicine for ailments susceptible even now of successful treatment by less heroic physic.

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An umbrella receivership is a method whereby equity provides an association with an umbrella with which it can weather a storm of creditors. It is one of the most telling cures that an attorney can advise to be administered to a failing enterprise. Yet, what percentage of recent law school graduates even know of its existence? Likewise, although the average student may have gathered a smattering of knowledge in bankruptcy, his knowledge of the extra-judicial administration of assets through assignments for creditors is probably on a par with his knowledge of umbrella receiverships. It is these gaps in the legal curriculum that the authors of this case book have endeavored to fill.

There can be little doubt but that such material should be taught because it is one of the indispensable needs of a practicing attorney. Some doubt, however, will arise as to the manner of presentation. Case books, primarily, are for pedagogical purposes. Proper pedagogical methods vary. It follows, therefore, quite naturally that good case books can present the same subject matter from different viewpoints depending on the type of teaching. It would not be expected that the same type of book used by a Bohlen would be used by a Keedy.

The authors of this book, very fortunately, refer to a law review article to show the goal at which they are aiming; i. e., “a realistic approach to the study of insolvent law”. It is indisputable that this is a most desirable aim so that the discussion must resolve itself into the question of whether that end has been attained. In order to answer this question it becomes necessary to outline the method of treatment used by the authors.

The book opens with a chapter on the several methods of administration of insolvent estates. This chapter is composed of, first, an essay on the general features of assignments for the benefit of creditors, receiverships in equity, and bankruptcy; second, the actual records of five extra-judicial settlements, two receiverships and one bankruptcy case; third, cases on the legal interrelation of

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the several methods, which cases most clearly justify the authors in treating together all three methods.

The second and third chapters are called "The Problem of the Debtor" and "The Problem of the Creditor". One becomes struck immediately by the artificiality of this classification because it follows almost of necessity that a problem of the debtor is a problem of the creditor. For example, the insolvency of the debtor, his type of business unit, and his character and acts of bankruptcy affect the problems not only of the debtor but also of the creditor. Conversely, the technical requirements for a creditor to institute equity or bankruptcy proceedings are matters which quite often are of grave concern to debtors as well as creditors.

Despite this criticism, the materials in these chapters are extremely good and present innumerable problems which today have a good many members of the bar worried. The reviewer, however, is at odds with the authors as to one of their assertions. They state that creditors cannot obtain a receivership against a common law partnership (pp. 197, 198). They cite as the basis for this conclusion the underlying theory of a New York case which did grant a receiver for a limited partnership. The authors, however, have apparently overlooked a later New York case, *Dillon v. Horn and Moring*, in which, after a very logical and practical discussion, the court granted creditors a receivership over a common law partnership. Again the authors cite the Pennsylvania case of *Hogsett v. Thompson* in which the court refused to grant an umbrella receivership over the affairs of an individual. Aside from the correctness of that decision, the authors apparently failed to note that the reason for the conclusion of the Supreme Court of Pennsylvania was that, "The supervision and control of partnerships, and of corporations, are recognized heads of equity jurisdiction, but the administration of the affairs of the individual, sui juris and compos mentis, is not."

The fourth chapter deals with "The Problem of Jurisdiction". The importance of such material is quite manifest. It seems, however, that not much material is necessary here because the underlying principles, aside from the conflict between equity and bankruptcy courts, are covered adequately in a good course on Conflict of Laws.

The closing chapter treats "Some Problems of Administration". Here are found some of the most interesting problems in this field of law—practical matters which are just as much business problems as legal ones. The authors first take up the significance of the nature of various assets; e. g., contingent interests, trusts, insurance policies, copyrights and fraudulently conveyed assets. This is followed by cases showing the nature of the control over the assets whether it be by summary order or by plenary action. Here is found the very interesting decision of Judge Dickinson in *In re Henry*, which involves the power of a bankruptcy court to prevent a sale of collateral by a pledgee of securities who has, by the very terms of the pledge, been given the right to sell the collateral. Then from a treatment of the general operation of a business, the authors jump to cases on the assertion of claims, their provability and their nature; e. g., tort, contingent, receivership certificate, and *Fosdick v. Schall* claims. The cases

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9. Compare the very interesting case recently decided by the Supreme Court of the United States where an individual in Pennsylvania in order to get a receivership over his assets, at the advice of counsel, formed a Delaware corporation to which he conveyed his assets. *Shapiro v. Wilgus*, 53 Sup. Ct. 142 (1932). Justice Cardozo, in that type of opinion which is already famous, reversed the circuit court which had permitted the debtor to take advantage of the device.
10. *Supra* note 4, at 93, 101 Atl. at 943.
then close with an analysis of the discharge of the debtor and his property, the very last problem being the rights of dissenting creditors in a reorganization by virtue of the so-called fixed principle of the Boyd case.

From this cursory examination of the mass of material it manifestly is not very fair to assert dogmatically that the authors have or have not succeeded in giving the subject a realistic treatment. Perhaps a real judgment of a case book can be made only by one who has used it in leading a pack of students over the course. The reviewer, nevertheless, feels that something is lacking. If a study is to be realistic it must have a guiding purpose. Hanna, for example, in his Cases on Creditors Rights,⁷ as well as Glenn in his Law of Fraudulent Conveyances,⁸ seem to have as a theme song running through their materials the conflict that results in the assertion of rights by creditors between “the race of diligence” and “the rule of equality”.

A still more realistic approach is the one to be used in the law school of the University of Pennsylvania whereby the more important part of such materials is to be dealt with under a study of a failing enterprise which, in turn, is to be part of an advanced course in business associations. This method will certainly have the advantage of making the problem more interesting, in that the study will concern itself, not with an enterprise that has already failed, but with one that may yet be kept alive, or even rejuvenated. The case book under review, however, cannot deal adequately with such matters and thus, aside from the many problems of reorganization, there is not one single reference, even in the index, to composition agreements.

The authors of this book, on the other hand, have illustrated most emphatically the great advantage of treating assignments for the benefit of creditors, receiverships in equity, and bankruptcy as mere methods and not ends in themselves. Their correlation of these methods of administering insolvent estates is to be most highly commended and is just as significant a step in the right direction as the analogous modern treatment of the law of the various forms of business association.

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The voluminous literature on human sterilization which has appeared in recent years has been for the most part definitely biased in favor of this procedure and has served to influence a considerable group of people to believe that the general employment of this method as a compulsory eugenic measure will bring about a substantial reduction in the number of the socially inadequate, especially the feebleminded. The enthusiasts have succeeded so well in their propaganda that even sober-minded persons have urged the adoption of broad human sterilization legislation as a means of coping with the mentally disordered and deficient, and of reducing the burden of state appropriations to public institutions supporting them.

HUMAN STERILIZATION is an opportune work in that it “is not designed as propaganda either for or against the program of human sterilization. It purports to be a scholarly and scientific treatment of the available data on the subject. The conclusions are not final but suggestive”.⁹ The presentation is remarkably impartial and fair, the material well arranged, and the style pleasing.

⁷ Commerce Clearing House, Inc., Chicago (1931), to be reviewed in an early issue.
⁹ ix.
and effective. The author has placed in easily accessible historical and tabular form the important facts relating to the various sexual sterilization statutes which have been enacted in the United States. A very comprehensive and valuable bibliography is appended.

Most informed readers will agree in the large with the author’s interpretation of his material. Several passages, if taken literally, are, however, amazing. “The psychiatrists and psychologists in their respective sciences have made little progress in determining the causes, symptoms, diagnoses, prognoses and therapeutics of the various mental disorders” 4; “Chaos exists in the diagnoses and in the prognoses of the mental disorders” 5; “the study of the causes of the mental diseases and the mental deficiencies has thus far been practically fruitless.” 6 “Many efforts have been made to classify the mental disorders and to understand their nature, but to date very little progress has been made.” 7

Yet sixteen pages are devoted to the faithful presentation of the classification of mental diseases which is in general use in this country today and which the author notes as “devised by the American Psychiatric Association, endorsed and adopted by the National Committee for Mental Hygiene, the United States Census Bureau, the United States Public Health Service, the United States Veterans’ Bureau, the Medical Department of the United States Army and by a vast majority of the state and private hospitals”. 8 The author’s own statement indicates clearly the almost universal acceptance and approval of this classification in this country. It is, however, but one “of the many diagnoses and classifications of mental diseases”. 9 “How long this will durate time can only tell.” 10 The author’s comment in presenting the classification of mental deficiency of the American Association for the Study of the Feeble-minded is: “The nature of feeble-mindedness is no better mastered by psychiatrists and psychologists than mental disease.” 11

The author’s dissatisfaction with the accomplishments of psychology and psychiatry is apparently based upon his desire for a final enduring classification and for clearness and certainty in the etiology, nature, diagnoses, prognoses and treatment of the mental disorders and deficiencies. This end is obviously desirable, but the human material with which psychology and psychiatry must work is too innately complex, variable and heterogeneous ever to admit of a definitive classification.

Hypotheses, classifications and the orderly arrangement of data are not therefore the primary aims of psychology and psychiatry. They are steps in the scientific method of painstaking search for the ultimate truth and real laws of mental functioning in health and in disease. The classifications and hypotheses of psychology and psychiatry will be kept only as long as they are confirmed by observed facts and experience. The classifications of mental disease and defect now in general use and presented by the author have for some years and still do apparently fulfill the canons of science. When and if, however, these classifications and the hypotheses implied therein prove untenable in whole or in part in the face of further observation and experience, they will be ruthlessly scrapped or modified. Psychiatry confidently expects its current classifications to undergo modifications. To think otherwise would be to assume that the point of complete knowledge had been reached.

The author considers the question of the inheritance of mental disease and deficiency. 12 Theories of heredity are presented briefly and ably. While the

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Footnotes:

6 Chapter III.
7 Appendices, 287-314.
8 129-130.
9 129.
10 130.
11 148.
12 Chapters VI, VIII and IX.
uninformed reader will probably gain but a smattering understanding of the hypotheses of heredity from this presentation, nevertheless this outline and the accompanying bibliography will serve as a ready guide for those who may wish to pursue this subject further. Heredity is one of the most complex and baffling problems to be attacked by science. It will undoubtedly consume many years of careful, painstaking observation and study in the various branches of biology to yield substantial results, notwithstanding the vast amount of valuable work which has already been accomplished. The question of heredity is, however, the whole crux of the question of human sterilization. "Whether one is a moderate or a radical advocate of compulsory human sterilization, the information as to whether the etiology of the patient's mental ailment is hereditary or acquired is essential." 13

In the psychoses of frank mental diseases, heredity can be demonstrated as the predominant causal factor only in a relatively small proportion of cases. Most of the mental diseases are acquired.14 The consensus of psychiatric opinion today is that only 50 per cent. of the feebleminded inherit their defects, the rest having become defective because of intra-uterine injury, birth accidents or infectious diseases, such as meningitis, sleeping sickness, whooping cough and similar processes during the very early years of life.15 In a number of cases in the hereditary group in and outside of institutions for the feebleminded the role of heredity is obvious. In the leading cases of Buck v. Bell16 and State v. Troutman17 the patients were in this category. In the latter case the appellant, twenty-six years of age, physically normal, had the intelligence of a child of four or five years of age. His mother, father, five brothers and six sisters were all feebleminded. In other cases of this group the evidence is less convincing and the question of heredity must be decided by carefully weighing all the facts in the case in the light of experience. Finally, there is a group in which it is impossible to decide whether the defect is hereditary or acquired. A feebleminded child may be born of parents who in the light of the most searching psychiatric and medical examinations are mentally and physically normal or superior. The family history may be negative for mental disease and defect and known predisposing conditions. Is the child's condition to be attributed to latent defect in the germ plasm of one or both parents? "Suppose we sterilize every mental defective and every mentally diseased person. If every mental sub-normal now living were sterilized, the resulting decrease in number of them a generation hence would be insignificant. In order to produce any marked decrease in the total number of mental defectives and mentally diseased a generation hence, it would be necessary to sterilize, or otherwise prevent the propagation, not merely of those who are themselves feeble-minded or mentally diseased, but all those who are heterozygous, that is, latent carriers of these mental ailments." 18

Criminals, per se, should not be subject to compulsory human sterilization; criminality itself is not inherited but is an acquisition; the facts of crime are nothing but the evidence of a maladjustment between the individual and society.19 The terms "mental disease" and "feeblemindedness" do not denote specific disease entities but designate symptoms or a symptom complex arising from a diversity of causes.20 The human sterilization program provides for the sterilization of individuals, not classes.21

There is no doubt that the alarmist eugenicists with their jeremiads of humanity's impending self-destruction,22 have done a service through their popular presentations of feebleminded families in focusing attention upon this
group as a whole. They have, however, unduly exaggerated the danger inherent in the feebleminded and have by their overemphasis of the rôle of heredity led people to place too much hope on sterilization. This group has also succeeded for a long time in obscuring the work of the school of optimistic eugenics, which points out the value and function of painstaking and plodding individuals of low mentality in society and sees encouragement in natural selection and the survival of the superior and in the institutionalization of the inferior as a contraceptive and social measure. The author presents a synopsis of various methods suggested or employed for race betterment in the history of mankind. These include restrictive marriage laws and customs, eugenic education, systems of mating designed to conceal defective strains, general environmental improvement which is emphasized by the mental hygiene movement, scientific breeding which is obviously impractical in our present society, euthanasia, neomalthusianism with its doctrine of birth control or continence in marriage, laissez faire, institutionalization or segregation, and human sterilization.22

Statistics regarding the incidence of mental illness and deficiency have received a wide publicity in recent years and always prove interesting and sometimes startling.24 The author presents in handy and condensed form important statistics regarding the mentally incompetent in the United States, using principally the figures of the Bureau of Census of the Department of Commerce of the United States Government, of the American Medical Association and of H. M. Pollock to show the number and distribution of mentally diseased patients, feebleminded and epileptics, the economic waste of mental disease and the economic loss of earnings of these individuals. The average daily census of nervous and mental hospitals in 1930 was 415,042. More than 52 per cent. of all the patients in all the hospitals and institutions in the Union are in institutions for nervous and mental disorders, although only 8.4 per cent. of the hospitals of the country are for nervous and mental cases. It is estimated that one person out of twenty-two becomes a patient in a hospital for mental diseases during the lifetime of a generation.25

Eugenic and therapeutic human sterilization is distinctly a modern movement. The first eugenic human sterilization bill in the United States was introduced in 1897 in the Michigan Legislature but failed to be enacted.26 Sixty-three different human sterilization acts have been enacted since the legal inception of the movement in the United States. Twenty-seven states in the Union may legally practice eugenic human sterilization today. About twelve thousand individuals have been already sterilized under the onus of this legislation. It was in the Indiana Legislature, on March 9, 1907, that the first compulsory human sterilization act was adopted.27

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22 Chapter I.
24 The number of patients in public and private hospitals for the mentally diseased, mentally deficient and epileptic in Pennsylvania on May 31, 1932, was 38,814. On the basis of the average increment in number of patients in public mental hospitals in Pennsylvania for the last five years, we have to look forward to an increase of 800 patients per annum or 1600 per biennium, which means that unless other means be found to handle these patients Pennsylvania should construct every biennium a new mental hospital of the size of the Danville State Hospital.
26 Chapter II.
26 The first human sterilization bill in the United States to be passed was approved by the Pennsylvania Legislature on March 21, 1905. This bill (Senate 35), entitled "An Act for the Prevention of Idiocy", was returned to the Senate by Governor Samuel W. Pennypacker on March 30 with his veto.
27 Chapter II.
27 The Pennsylvania Legislature passed a second sterilization bill (Senate 560) on April 28, 1921, which met the same fate as its predecessor. Governor William C. Sproul vetoed the bill on May 25, 1921, taking the position that the bill was too drastic and the state not prepared for it.
Three landmark legal decisions on human sterilization are presented. *Buck v. Bell*, decided May 2, 1927, represents a historical and highly important decision in the struggle for the compulsory sterilization of the mentally disordered in the United States. The Supreme Court held unequivocally that the Virginia law, authorizing the sterilization of mental defectives and others, under careful safeguards, is not void under the Fourteenth Amendment to the Federal Constitution, as not denying due process and equal protection of the law.\(^\text{28}\) *Davis, Warden v. Walton,\(^\text{29}\) rendered by the Supreme Court of Utah on April 9, 1929, held that the Utah human sterilization law providing for the sterilization of sexual criminals, idiots, epileptics, imbeciles, and insane, was constitutional but that the appellant should not be sterilized notwithstanding, the court arguing that, judging from the facts in the transcript of record, the appellant was a criminal and a sodomist—behavior he had acquired and not inherited and which could be remedied by a reeducation and a reconditioning. “This decision stands for the proposition that, though the human sterilization laws are constitutional, they shall be enforced only in those instances where the patient has inherited his insufficiency and will in all likelihood transmit it to his or her offspring. *Davis, Warden v. Walton\(^\text{30}\) decision is thus an advance over the *Buck v. Bell* decision, which merely declared such legislation constitutional."\(^\text{31}\) In *State v. Troutman*,\(^\text{32}\) decided May 20, 1931, and in which every major legal point in the whole field of human sterilization was contested, the Supreme Court of Idaho upheld the constitutionality of the Idaho human sterilization statutes which contemplate the sterilization of feebleminded, insane, epileptic, habitual criminals, moral degenerates, and sexual perverts, who are a menace to society. In this case the appellant was charged with hereditary feeblemindedness which was established to the court’s satisfaction, and had been sterilized.\(^\text{33}\)

Consideration is given to the present legal status of current human sterilization laws, their judicial interpretation, their relationship to the police power, due process of law, as class legislation, cruel and unusual punishment, bill of attainder, and in connection with public opinion, the courts and legislatures.\(^\text{34}\) The treatment of these important and interesting points is all too brief. A critical and detailed discussion by the author of the current attitude of our courts toward human sterilization and the legal points involved would have been most interesting and valuable. The brevity of his presentation of this subject is apparently due to the fact that, as the author states in his introduction, he has elsewhere treated these phases.\(^\text{35}\)

An elementary anatomical description of the male and female genital organs is presented and the techniques of the common surgical operations for purposes of human sterilization are briefly outlined.\(^\text{36}\) In considering the effects of human sterilization upon patients,\(^\text{37}\) the author reaches the conclusion accepted by the great majority of psychiatrists that the therapeutic value of sterilization is still a moot question. A summary of the operations authorized by law for this purpose in the respective states is presented.\(^\text{38}\)

Whom shall we sterilize?\(^\text{39}\) The eugenic motive of human sterilization is only as strong as our knowledge of the inheritance of human qualities. Therefore, those socially inadequate persons, the heredity of whose undesirabilities...
is doubtful, should not be subjected to sterilization until we are more certain as to which are inherited. Therapeutic sterilization is justifiable in the treatment of pathologic conditions of the genito-urinary tract, but its use as a mental therapeutic agent should await further investigation to determine with greater accuracy the effects of sterilization on the human being. The punitive motive has not met with the favor of the public or of the courts. The public welfare is opposed to the sterilization of either one of the socially desirable parents who would ordinarily beget socially desirable children; furthermore, human sterilization is altogether too radical a contraceptive procedure. Thirty-four distinct classes of people are amenable to compulsory sterilization by virtue of the various state laws. A mere perusal of the list of the socially undesirable classes subject to human sterilization in the several states is sufficient to convince one of the misinformation concerning the mental disorders of mankind that our legislators entertain. Well meaning as they may be, they have allowed themselves to fall a prey to the propaganda of the over-zealous doctrinaire eugenicists of our country who regard the sterilization of all our socially inadequate people as one of the panaceas of our social ills. There is no justification for the eugenic sterilization of inmates who are destined to continue indefinitely under custodial care in institutions, but the sterilization of selected institutional inmates is a valuable adjunct to the parole and discharge system in the interests of the individual and society. The tendency in recent years is to phrase the human sterilization legislation so that it will include the intended socially inadequate people at large and in institutions, in order to avoid the charge of arbitrary and discriminatory class legislation. The real menace to society is the cacogenic people at large. One wonders how practically this vastly more numerous group of people might be subjected to this legislation.

As to the administration of these laws the author considers the present basis of selecting cacogenic individuals a most uncertain one and does not approve the usual administrative procedure, which consists in the selection by the institutional superintendent or physician of the alleged cacogenic prospects, submission of a recommendation for sterilization to a higher state board, consisting usually of physicians, which passes on the merits of the institution's judgment and which decision may be appealed by the patient to a judicial tribunal. The author recommends that every state have a department of eugenics and euthenics officiated over by a capable eugenicist and an experienced sociologist and with a special personnel, among the duties of which should be "(1) the study, through field surveys, of the genealogies of all known cacogenic peoples in the state, (2) the study of all doubtful cacogenic people as to their nature, nurture and family history to determine as to whether the individuals are cacogenic, (3) the examination eugenically of all inmates in state and private institutions for dependents, (4) the study and maintenance of case histories of the postoperative period of sterilized individuals to determine the effects of the surgical operation upon their metabolism and upon their social and economic lives, (5) the determination whether the socially unadjusted are cacogenic or merely socially inadequate and (6) the adjustment of the maladjusted and unadjusted people to society through the various social agencies of the state". The department should be required, after discovering potential parents of socially inadequate people, on its own initiative to institute regular judicial proceedings in the local county court, with jury trial, to determine whether judgment of compulsory sterilization should be passed upon the defendant. The author feels that "What our social welfare work needs today is greater centralization and coordination by the state of its various social agencies for the purpose of greater efficiency and the reduction of the duplication of effort".

40 Also Appendix F.  
41 Chapter XV.  
42 272 and 273.  
43 275.
BOOK REVIEWS

The trend in the last twenty years in the public care of the mentally disordered and deficient has been decidedly toward centralization of control. This is a desirable tendency insofar as it relates to the state bearing the complete responsibility for the financial support and general administration of public institutions for patients in this group. It leads to greater economies, uniformly higher standards of care and treatment and to a more just distribution of the tax burden, and greatly simplifies the administrative procedures involved in the care and social rehabilitation of these groups. However, the state executive department which is charged with broad administrative responsibilities, should not have the major direct burden and responsibility for research and the clinical care and treatment of patients. This duty is best reposed in the institutions themselves and in separate specialized research hospitals such as state psychopathic or psychiatric hospitals, whose staff members may direct their whole time and thought to patients in the hospital and in the community and who are less subject to the political vicissitudes to which employees of state executive departments are commonly exposed. In just this latter respect is there to be noted a sharp tendency toward decentralization, toward allowing the local clinical units a greater measure of clinical and research responsibility and initiative. In procedure is also to be observed a very wholesome trend toward simplification in the handling of adult and juvenile delinquents in whom mental disorder or deficiency is suspected. Judges and attorneys prefer more and more to deal directly with psychiatrists, to send the delinquent to a mental hospital or to a psychiatric clinic for prolonged and thorough observation. In view of these experiences the writer is of the opinion that the author's careful plan for a department of eugenics and eugenics, with more centralized control of the socially unadjusted, is a bit more theoretical than practical and would not bring us nearer our goal.44

Doctor Landman states at the beginning of his work, "Our study is primarily concerned with the relative merits and demerits of segregation as over against human sterilization, as social therapeutic agents". 45 The author does not, however, adequately consider the merits of institutionalization, which has been the backbone of the present system, here and abroad, of combating the menace of mental disorder and defect, to enable the reader to draw a fair conclusion in the matter. A more comprehensive presentation and critical evaluation of this side of the picture would have been a valuable addition to this work.

The author takes a conservative position toward eugenic sterilization. "In the main, the sterilization of the obviously feeble-minded, though it has a certain diminutive effect, far from solves the problem of eradicating the ever increasing wave of the socially inadequate." 46 "Any new program for social therapy must be held in abeyance until such time when an adequate scientific basis for it is established. Human sterilization, as a social program, requires more scientific evidence. In the meantime, if human sterilization must be employed, it should be employed cautiously." 47 With these statements most psychiatrists will agree.

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44 That this problem of administration and procedure is difficult and has not yet been solved is fully appreciated by the reviewer, who has recently made a study of this subject: Maeder, The Problem of Mental Deficiency in Pennsylvania, PROCEEDINGS OF THE FIFTY-SIXTH ANNUAL SESSION OF THE AMERICAN ASSOCIATION FOR THE STUDY OF THE FEEBLE-MINDED, Philadelphia, Pa., May 28-29, 1932.
45 14.
46 151.
47 197.
BOOKS RECEIVED


PRAJUDIZIENRECHT UND RECHTSPRECHUNG IN AMERIKA. By K. N. Llewellyn. Theodor Weicher, Leipzig, 1933. Pp. xvi, 122 (Part I); 360 (Part II).