

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era – Criminal Justice/Punishments/Sterilization

State v. Feilen, 70 Wash. 65 (1912)

Peter Feilen was convicted of statutory rape and sentenced to life in prison. As part of his sentence, the court ordered “an operation be performed upon said Peter Feilen for the prevention of procreation.” Feilen appealed that sentence to the Supreme Court of Washington. He claimed that sterilization as a criminal sanction violated the cruel and unusual punishment clause of the state constitution.

The Supreme Court of Washington sustained the trial court decision to have Feilen sterilized. Judge Crow ruled that the cruel and unusual punishment clause of the state constitution was limited to physical torture. Judge Crow also cited scientific evidence favoring sterilization. What use did he make of the scientific evidence? Did his opinion suggest that the meaning or application of cruel and unusual punishment might change if the weight of scientific evidence changed?

JUDGE CROW

...

The crime of which appellant has been convicted is brutal, heinous, and revolting, and one for which, if the Legislature so determined, the death penalty might be inflicted without infringement of any constitutional inhibition. . . . If for such a crime death would not be held a cruel punishment, then certainly any penalty less than death, devoid of physical torture, might also be inflicted. In the matter of penalties for criminal offenses, the rule is that the discretion of the Legislature will not be disturbed by the courts, except in extreme cases. . . .

On the theory that modern scientific investigation shows that idiocy, insanity, imbecility, and criminality are congenital and hereditary, the Legislatures of California, Connecticut, Indiana, Iowa, New Jersey, and perhaps other states, in the exercise of the police power, have enacted laws providing for the sterilization of idiots, insane, imbeciles, and habitual criminals. In the enforcement of these statutes vasectomy seems to be a common operation. Dr. Clark Bell, in an article on hereditary criminality and the asexualization of criminals . . . quotes with approval the following language from an article contributed to Pearson’s Magazine for November, 1909, by Warren W. Foster, Senior Judge of the Court of General Sessions of the Peace of the county of New York: “. . . There appears to be a wonderful unanimity of favoring opinion as to the advisability of the sterilization of criminals and the prevention of their further propagation. The Journal of the American Medical Association recommends it, as does the Chicago Physicians’ Club, the Southern District Medical Society, and the Chicago Society of Social Hygiene.”

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Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the Legislature, save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted.