

## The Long Tail of Eugenics

**Author :** Jonathan Simon

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Laura I. Appleman, [Deviancy, Dependency, and Disability: The Forgotten History of Eugenics and Mass Incarceration](#), 68 *Duke L. J.* 417 (2018).

The search for the precursors to contemporary mass incarceration in the U.S. has become one of the great legal, historical, and sociological debates of our times. Many of us have focused on two particular arcs of penal history in tracing the genealogy of mass incarceration. One is associated with the birth of the penitentiary and the police in the first third of the 19th century in the context of emerging capitalism (both slavery and free labor in the U.S.). From this perspective, mass incarceration has always been a part of the DNA of America's form of racial capitalism. The other locates the genesis much closer to our own time in the political and economic crises of the late 20th century associated with the neoliberal transformation of the U.S. economy.

[Laura Appleman's](#) article, *Deviancy, Dependency and Disability*, makes a convincing case for adding a third arc of history: one that focuses on the eugenic period of the early and mid 20th century as a crucial precursor for mass incarceration and that offers a comprehensive treatment of the eugenic influence on criminal justice policy and what she calls its "long tail." Eugenics refers specifically to efforts to improve society by regulating births, but it also applies to a much broader range of policies influenced by core beliefs that many of the worst social problems facing America could be solved by segregating, sterilizing, or even eliminating the physically, mentally, and morally disabled. Appleman's article builds on recent work of historians which has underscored the [radical nature](#) of America's embrace of eugenic thinking and its enduring significance in fields like [immigration](#), [drug and alcohol policy](#), and [criminal statistics](#).

The influence of eugenics on criminal justice was direct and indirect. Directly, eugenics served alongside positivist criminology as a scientific anchor of the so-called "Progressive" era expansions of the carceral state through juvenile justice, probation, and other individualizing mechanisms that determined penal severity by individual traits, especially race. Thus, the punishment of crime became a mechanism for achieving a negative eugenic goal of segregating the dangerous. These mechanisms became important sources of hyper punishment, especially of young Black men, during the build up of mass incarceration. Ironically, we still think of them as oriented toward helping people leave the carceral state, and many contemporary reform ideas are perhaps dangerously lodged there.

Perhaps even more important, and less noted, is the indirect influence that Laura Appleman points to. During this period, pre-existing asylums for people suffering mental illnesses (which had existed since the early 19th century) were greatly expanded and overcrowded with people classified mostly as "feebleminded" (an imprecise term for those considered intellectually disabled). In the eyes of eugenicists, the feebleminded were not simply intellectually limited (itself a dubious proposition given then contemporary measurement standards) but doubly dangerous in their criminality and their promiscuity. Since their traits were understood to be inheritable, the physical segregation of the feebleminded provided a double benefit against crime and other problems. Thus, in the first years of the 20th century, there were more than 10 times as many individuals held in institutions for the mentally ill and disabled as were incarcerated in federal and state prisons.

In short, mass eugenic incarceration of the disabled in the early 20th century established the basic commitment to using institutions of confinement to achieve the eugenic aim of reducing crime and social problems in American society in a manner unrestrained by traditional legal concerns with legality and culpability. While eugenics as a social policy was discredited, its influence on criminal justice thinking was never redressed. When America entered a new phase of

punitive expansion in the late 1970s, prison became the dominant custodial response to an institutionalized understanding of the criminal threat that extended well beyond the boundaries of legal guilt. As I read Appleman's argument, this is not a claim of simple transcarceration (the people once warehoused in asylums are now in prison) but that an unbroken link to eugenic thinking in our criminal justice policies keeps social policies and institutions fixated on incapacitating those othered by physical or mental difference, disability, queerness, or racialization.

In the second part of her article, Appleman connects this earlier history to the better known modern history of deinstitutionalization and the failure of community care initiatives after the [Supreme Court's](#) due process decisions of the 1970s accelerated the closing of public mental hospitals. While many appreciate the relevance of deinstitutionalization to modern mass incarceration, few connect it to the earlier embrace of eugenics. It is not an accident that our criminal justice system selects for disability; it is the very mark of its eugenic origins. Meanwhile, this highly vulnerable population has been packed into overcrowded prisons that seem almost organizationally incapable of delivering adequate care.

Harder to understand, but crucial to disabling this complex, is why, lacking the powerful but now largely abandoned scientific theories of eugenics regarding the centrality of inheritable traits (an argument that has never entirely gone away but is now marginal), this eugenic merging of disability and crime has been able to stay coherent. Is it largely the way the various organs of the carceral state reproduce the priorities, if not the specific propositional claims, of eugenics (focus on minorities, substance abusers, etc.)? What role is the law itself playing in holding this ensemble together? Hopefully, these questions will be taken up by scholars focusing on the middle of the 20th century.

Laura Appleman provides us with some hopeful directions for thinking about how to combat the role of this long tail of eugenics. One important implication is the centrality of disabilities to the construction of the carceral state and the historical pattern of excluding and incarcerating people living with disabilities rather than facilitating integration. Asserting the rights of the disabled provides one way to battle for better prisons. Appleman also argues that screening out people with disabilities—at the earliest stages of the criminal process—would avoid a great deal of cruelty while enabling large savings on projected prison health care costs. Diversion programs are certainly necessary, but if the long tail of eugenics is also the framing together of crime and disability into a spiral of causation that exaggerates the danger of each (and the severity of the repressive response), then it may not be sufficient. We may need to go beyond diversion to build common strategies of decarceration across different institutions.

Appleman suggests appreciating the growing convergence between prisons and nursing homes. Prisons are becoming nursing homes for an aging prison population, as a growing number of people living outside prisons with severe physical disabilities join the very old in the nation's growing body of nursing homes; a new kind of mass incarceration. (P. 458.) Rejecting and uprooting the long tail of eugenics, and its ensemble of stigmatized subjects and exclusionary practices, might require a commitment to abandoning segregation as a goal altogether, whether in criminal justice or in health care delivery.

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