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IS COMPULSORY HUMAN STERILIZATION THE LONG SOUGHT SOLUTION FOR THE PROBLEM OF OUR MENTAL INCOMPETENTS?

Three decades ago such a question would have been met with a prompt and vociferous answer in the negative, accompanied by cries of "heresy". But in the short space of thirty years we have undergone such radical changes that now one who is so temerious as to question the efficacy of the "Race Betterment" project is looked upon as an old "fogy", a person more to be pitied than condemned. Whence comes this reversion to Spartan philosophy? Is it based upon sound principles of heredity and genetics? Or is it the product of unfounded conjecture and the great American desire of experimentation which prompted the other "noble experiment" from whose toils we have only so recently extricated ourselves? These are the questions which will be discussed in the following pages.

There have been sixty-three human sterilization statutes passed in thirty states in the last twenty-five years. There are now forty-two statutes in effect in twenty-seven states. In only one state has such a statute been declared unconstitutional since 1921. The Court of Appeals in North Carolina in the case of *Brewer v. Walk*¹ declared that such a statute providing for the compulsory sterilization of mentally defective persons² violated the due process clause of the 14th Amendment and Art. I, Sec. 17, of the state Constitution in that it failed to provide for notice and hearing.

The decision in this case is all the more daring for it follows the United States Supreme Court decision in *Buck v. Bell*.³ The Supreme Court here upheld the Virginia statute⁴ which provided for the sexual sterilization of inmates of institutions who are inflicted with hereditary forms of insanity that are recurrent-idiocy, imbecility, feeble-mindedness or epilepsy. It provides that the superintendent of the institution in which the person is confined shall make application to the board of directors

¹ 204 N. C. 186, 167 S. E. 638 (1933).

² Code (N. C.) 1931, Sec. 2304 (i) and (j).

³ 274 U. S. 200, 47 Sup. Ct. Rep. 584 (1927).

⁴ Virginia, Acts 1924, c. 394.

of his institution presenting them with data and a request that the particular inmate be vasectomized or salpingectomized. Thirty days notice must be given the inmate and his legal representative of the hearing to be conducted by the board of directors so that the individual may be adequately protected in his rights. This board may order the sterilization operation (but not castration) for therapeutic or eugenic reasons. Additional provision is made for an appeal to the circuit court in the county within 30 days after the submission of the board's order. The circuit court may affirm, revise, or reverse the orders of the board. Within 90 days after the decision of the circuit court either party may appeal to the supreme court of appeals. Mr. Justice Holmes in delivering the opinion of the court is astoundingly brief and "un-Holmes like". But right or wrong the decision has definitely settled the policy of the United States in regard to sterilization statutes modeled after the Virginia statute, unless the Supreme Court sees fit to reverse itself, which, to put it mildly, seems far from probable.

Two subsequent state decisions seem much better reasoned. The first of these: *Davis, Warden v. Walton*⁵ held a sterilization statute⁶ constitutional which provided for the sterilization of sexual criminals, idiots, imbeciles, epileptics and insane. But the court refused to allow Esau Walton, a negro convicted of sodomy, to be sterilized, upon the ground this his characteristics were acquired and not inherited. This case stands for the proposition that, although the sterilization laws are constitutional yet, they shall be enforced only where the patient has inherited his insufficiency and is likely to transmit it to his or her offspring.

The second: *Board of Eugenics v. Troutman*,⁷ was a case where the defendant, Troutman, was normal physically and sexually, twenty-six years of age, with a mental age of four or five. His mother, father, five brothers, and six sisters were all feeble-minded and all had been at some time institutionalized. His mother's sister was the mother of seven children, three of whom were feeble-minded and institutionalized. One of these was the mother of ten more, all of whom were in various institu-

⁵Utah, 276 Pac. 921 (1929).

⁶Utah, Laws 1925, c. 194, as amended by Laws 1929, c. 68 and 285.

⁷Idaho, 299 Pac. 668 (1931).

tions and defective. On appeal to the supreme court of Idaho every major legal point in the whole field of human sterilization was contested, viz.: Are the Idaho statutes in conflict with Sec. I, Art. I of the Federal Constitution which guarantees life, liberty and property?—No. . . . Are the statutes in conflict with Sec. VI, Art I of the Idaho Constitution prohibiting “cruel and unusual punishment”?—No. . . . Are the statutes in conflict with the 14th Amendment of the Federal Constitution guaranteeing “due process of law”?—No. . . . Are the statutes in conflict with Sec. I, Art. XI of the state Constitution which forbids the interchange of judicial and executive powers of the respective departments of government?—No. . . . Are they unconstitutional because they are discriminatory in that they do not afford equal protection of law for all?—No, for the law applies to all specified whether at liberty or in institutions. . . . Are not the Idaho statutes advocating mere problematic theories of eugenics which therefore constitute an unwarranted interference with human liberty?—The court held NO for the record showed that Troutman was afflicted with a native hereditary type of feeble-mindedness. The evidence of Troutman’s cacogenicity, it is submitted, is much more convincing than was the evidence in the case of Carrie Buck.

The state of the law, as it now stands, in regard to the constitutionality of statutes authorizing the sterilization of the insane, the feeble-minded, and the epileptic, is to the effect that such statutes are a constitutional exercise of the police power of the state so long as they conform substantially to the Virginia statute, set out above.

The stimulus to such a landslide of legislative gymnastics was applied by the Race Betterment Foundation of Pasadena, California.⁸ This organization by a process of lobbying and “education” succeeded in getting the first bill passed in the California legislature in 1909.⁹ A new act replaced it in 1913¹⁰ and this was amended in 1917.¹¹ Under these statutes and in

⁸ It is true that a sterilization statute was passed in Indiana in 1907 (Acts 1907, c. 215), but few if any operations were performed under its authority until much later. It was declared unconstitutional in the case of *Williams v. Smith*, 190 Ind. 526, 131 N. E. 2 (1921).

⁹ Calif. Stat. 1909, c. 270.

¹⁰ Calif. Stat. 1913, c. 363.

¹¹ Calif. Stat. 1917, c. 489.

the environment of eugenic stimuli there have been over 6,500 sterilization operations performed in this state, more than four times as many as in all of the rest of the world put together.¹²

As an example of the feverish activity on the part of social legislators one particular incident would be amusing were it not for the mischief it might have wrought. One C. E. Ballew introduced a bill for human sterilization in the 55th General Assembly of the Missouri Legislature in the winter of 1929. Section 1 of the proposed bill provided for the sterilization of those "convicted of murder (not in the heat of passion), rape, highway robbery, chicken stealing, bombing, or theft of automobiles."

There have been several sterilization bills proposed in the Kentucky Legislature. The probability is that there will be another introduced at the next session. Should it be passed? In order to answer that question it is necessary to determine if the result it would accomplish justifies the sacrifice of the rights of human beings to reproduce themselves. For the right to procreate is a human right coming within that broad definition of liberty which has been said to include "freedom in the enjoyment of all of one's faculties."¹³

In short, are sterilization statutes sociologically sound? What end are they intended to achieve? In the past such statutes have been regarded as of three general divisions: penal, therapeutic and eugenic.

Their penal character has largely been lost. It is true that two or three states still have penal provisions but they are unenforced. It can readily be seen that such an operation would have little deterrent effect on crime in that it is a comparatively painless operation, at least in the case of the male, and is regarded by many as conferring a benefit upon the patient. Many voluntarily suffer the operation for its contraceptive effect. Almost unanimously they are satisfied with the result.

As for its therapeutic value, the writer has been able to find no record of its having been endorsed as a curative measure for psychoses, epilepsy, or feeble-mindedness. It is true that many times castration (ovariotomy in the female) has been employed with beneficial results in the case of diseased genitals. But this

¹² Landman, "Sterilization—Legislation and Decision", 23 Ill. Law Review 819 (1929).

¹³ *Allgeyer v. Louisiana*, 165 U. S. 578, 17 Sup. Ct. Rep. 427 (1897).

is not the purpose intended by such statutes. In fact castration is expressly forbidden by them.

Therefore the conclusion is inevitable that the benefit, if any, derived from such statutes is eugenic. In order to sustain them as eugenic measures one must first test their major premise, namely, that the conditions, whose spread they seek to check, epilepsy and feeble-mindedness, are hereditary. These will be taken up in their respective order.

Insanity is a legal and not a scientific term. It comprises a wide variety of mental diseases, differing in cause and manifestations. The ones most prevalent in institutions are, in order of prevalence, dementia praecox, manic-depressive, the senile group, paranoid group, general paralysis group, and the alcoholic or toxic group of psychoses.¹⁴

Are mental diseases inherited? This is a controversial question of the first order. Modern authority seems to be to the effect that they are not inherited. Mr. Cotton,¹⁵ after discussing the malevolence of the ancient doctrine of heredity as applied to the field of mental disorders, continues. "Fortunately, we are in a position today to show that the doctrine of heredity as applied to mental disorders is not in harmony with modern biological knowledge and is therefore, obsolescent."

H. S. Jennings in his interesting and very instructive booklet, "Prometheus or Biology and the Advancement of Man",¹⁶ after a thorough discussion of the problem points out that there is no way of foretelling or controlling the combinations that shall enter into a child of given parents.

L. J. Doshay, in an article, "Evolution Disproves Heredity in the Mental Diseases",¹⁷ concludes "the numerical deluge of the social incompetents seems to be inconsistent with the Darwinian postulates of natural selection and survival of the fittest." This, in the opinion of Mr. Doshay, points to the conclusion that "the possibility of the inheritance of mental diseases is practically nil and that the acquisition due to an unhealthy environment is very great."

¹⁴ Landman, J. H., "Human Sterilization", New York, Macmillan and Co., (1932), pp. 24-27.

¹⁵ "The Defective, Delinquent and Insane", Princeton University Press (1921), p. 21 et seq.

¹⁶ E. P. Dutton & Co., New York, pp. 34 et seq. See also Jennings' "The Biological Basis of Human Nature", pp. 329 et seq.

¹⁷ 131 Medical Journal and Record 143-148, 194-197, 248-250 (1930).

Mr. Healy says, in his "Mental Conflicts and Misconduct":¹⁸ "Concerning the problem of heredity . . . if any predisposition is inherited, it is not, in general, such as may be identified and traced in any ordinary family history."

T. H. Morgan, recently awarded the Nobel Prize, in an article, "The Mechanism and Laws of Heredity",¹⁹ states: "There are a few pedigrees that seem to indicate that certain types of insanity are hereditary. One type, Huntington's chorea, is probably the best authenticated case, . . . But even here the diagnosis is sometimes uncertain and the same criticism applies, a fortiori, to several other forms of insanity." And at page 26: "Until more definite information is available concerning mental traits and emotional reactions, some of us remain extremely skeptical of the crude and often forced attempts that have been made, so far, to determine what is inherited and what is acquired after birth."

Edward Newbury of the Psychology department of the University of Kentucky, in a radio talk given from the University of Kentucky radio studios of WHAS, December 9, 1931, on "Some Reasons Why We Behave As We Do", concludes: "The lack of conclusive evidence regarding the influence of heredity in the behavior of individuals and the vast amount of evidence showing the environmental influences on behavior, point to the moral for this tale. No longer can we comfortably lay the defects in our children to our ancestors, but in the light of what evidence we have, must accept the burden of responsibility for what they turn out to be."

In the light of modern knowledge we are forced to accept the proposition that mental disorders (insanity) are not hereditary traits.²⁰ They are diseases like any others which may affect us all.

Turning to epilepsy, we find that this abnormality belongs

¹⁸ Little, Brown & Co., Boston (1917), p. 313.

¹⁹ "The Foundation of Experimental Psychology," edited by Carl Murchison, Worcester, Mass., Clark Univ. Press (1929), p. 26.

²⁰ Of course, strictly speaking, they are not environmental either but are a result of a combination of both hereditary and environmental factors. This is the situation which is commonly recognized in such diseases as tuberculosis, where heredity, developmental environment and contagion are all considered points at which the disease may be fought and where it has proved most practical to serve the public health by a control of the latter two factors, i. e., the environment of the infant and childhood development, and the field of contagion.

to a large group of abnormalities which, although formerly classified as hereditary, are now, on the basis of more recent research, regarded as not belonging to this class even by those students who continue to make classifications between hereditary and environmental traits. The vast weight of modern authority is to the effect that it is not inherited.

Quoting from Sands and Blanchard, "Abnormal Behavior",²¹ p. 268: "There are various theories offered to explain the cause of epilepsy. Heredity has invariably occupied a prominent place among the theories, especially in the writings of the older school of physicians. However, more accurate data fail to reveal any truth in that claim, and direct transmission of the disease from the parent to the offspring is the exception rather than the rule."

W. A. Thom,²² in an investigation of 553 children of 138 married epileptics at the Monson (Mass.) State Hospital, found that of the 553 children only four were definitely epileptic and that six died during early infancy from convulsions supposed at the time to be epileptic in origin, i. e., less than two per cent of the children of epileptic parents were epileptic.

Abraham Myerson²³ states emphatically that epilepsy is not an inherited disease in the sense that it is transmitted from parent to offspring but is to be regarded as other physical diseases.

If insanity and epilepsy are not inherited then, what are we to say regarding the third of the most prominent abnormalities encompassed in eugenic legislation—feeble-mindedness? A good discussion of the problem is found in an article by J. H. Landman.²⁴ He says "It is now known that only fifty per cent of the feeble-minded inherit their defects. The rest have become defective because of intra-uterine injury, birth accidents, or infectious diseases (meningitis, encephalitis, whooping-cough, etc.) during the first year or two of life. Scientific knowledge is not as yet sufficient to permit the differentiation of the first type from the latter."

²¹ Dodd, Mead & Co. (1929), p. 268.

²² Boston Med. & Surg. Jour., Vol. CLXXV, Apr. 1916, p. 573; Oct., p. 599.

²³ "The Inheritance of Mental Diseases", Woods & Wilkins Co. Baltimore (1925).

²⁴ "Sterilization—Legislation and Decision", 23 Ill. L. Rev. 819.

A. Myerson, "The Inheritance of Feeble-Mindedness" and A. F. Tredgold, "Mental Deficiency", declare that where feeble-mindedness is alleged to be inherited, it is merely an injury to the germ plasm from without and may manifest itself for a generation or two and then disappear. They are the authority for the proposition that feeble-mindedness is not an hereditary character unit.

In a booklet put out by the American Association for the Study of Feeble-minded²⁵ it is admitted that the question whether these mental deficiencies are inherited or not is still unanswered.

Mr. East²⁶ quoting from a report of the Medical Committee of the Central Association for Mental Welfare, June 1922, in support of the question as to the advisability of sterilization

minded children. When they mate with 'non-carriers' they produce normal children, but who may themselves be carriers."

According to Mr. Landman,²⁹ of the 272,527 mentally diseased in the state hospitals in 1929, of whom 265,829 were tabulated only 11,942 or 4.5 per cent were mentally deficient. Only 11.9 per cent of all of the institutionalized feeble-minded are of sufficiently stable personality to live in society.³⁰

The conclusions deducible from the foregoing pages are: I. Insanity is NOT inherited. (Exceptions as in the rare case of Huntington's chorea.) II. Epilepsy is NOT inherited. III. (a) Fifty (50) per cent of feeble-mindedness is inherited. (b) But of that fifty per cent only eleven (11) per cent is inherited from feeble-minded parents, eighty-nine (89) per cent is inherited from parents who appear normal but are "carriers". (c) That means, by mathematical computation, only 5.5 per cent of the total number of feeble-minded inherit their deficiencies from feeble-minded parents.

Then in the light of cold reasoning the sterilization of the insane and epileptics will not, so far as we know, accomplish the desired result for these persons would not transmit their disorders to their progeny in any event. Secondly, the sterilization of *all* of the mental defectives, which is manifestly impossible, would only prevent the potential procreation of 5.5 per cent of the potentially feeble-minded children while *actually* the birth of feeble-minded children by the matings of carriers would be going on unabated. It is analogous to the situation of the man in the mire, taking one step forward and slipping back two. But this picture, hopeless as it is for the cause of sterilization as it now exists, still does not depict the absolute futility of the operations under the modern sterilization statutes. A large portion of them are applicable only to those defectives in state institutions. As we have seen, only 11,942 of the total of 330,000 feeble-minded persons are in such institutions. The chances of sexual intercourse between such persons within the walls of the institutions being distinctly negligible, there is no necessity of sterilizing those who remain but only those who go out into the world. But how many are

²⁹ *Ibid.*, pp. 24-27.

³⁰ *Ibid.*, p. 37.

sufficiently rehabilitated to be released? Mr. Landman says 11.9 per cent, i. e. only 1,422. Now granting that fifty (50) per cent of this group have inherited their feeble-mindedness and will transmit it to their offsprings, it is necessary, then, to sterilize only 711 to prevent the potential procreation of feeble-minded children. In those states having statutes applicable only to institutionalized feeble-minded it is a fair assumption that feeble-mindedness will continue to increase as it has in the past in proportion to the increase in general population. Even in those states, eleven in number, having statutes also applicable to defectives at large it is to be feared that they, too, have restricted their operations to institutional charges for, of fifteen states reporting operations, only 2,938 feeble-minded persons were sterilized (compared with 6,246 insane persons).³¹

The writer is forced to conclude that the weapon, furnished by the eugenic enthusiasts with which to combat the threat of feeble-mindedness is woefully inadequate to cope with the situation. But perhaps this fear of a deluge of incompetents is somewhat unwarranted. Nature, as usual, comes to the rescue by a process of application of the laws of natural selection and survival of the fittest. The mortality rate among the defectives is much higher than among the normal. N. A. Dayton furnishes some valuable data based on studies of 8,000 persons in the Massachusetts schools for the feeble-minded over a period of fourteen years.³² He gives the following ratios of death among the defective as compared with the normal from: Epilepsy 24-1; diarrhea 19-1; broncho-pneumonia 14-1; measles 9-1; lobar-pneumonia 3-1; tuberculosis 3-1; heart disease and nephritis 2-1.

Although this paper does not purport to offer a substitute for the sterilization statutes yet a glance at the nationalities of the inmates of our hospitals for the mentally diseased and defective might shed some light upon a vexatious problem. The following figures are taken from an official report of the Government.³³

³¹ Landman, p. 49.

³² Dayton, N. A., "Mortality in Mental Deficiency over a Fourteen Year Period in Massachusetts", Thirty-Sixth Proceedings and Addresses of the Fifty-Fifth Annual Session of the American Association for the Study of the Feeble-Minded, Vol. 36, 1931-32, pp. 127-212.

³³ "Mental Patients in State Hospitals", Govt. Prtg. Co. (1931), p. 6.

The total number of white persons in the state hospitals for the mentally diseased for the year 1929 was 272,527, an average of 225.9 per 100,000 general population. Although 87.7 per cent of the total population of the United States are native and only 12.3 per cent are foreign born yet in a tabulation of 244,968 of the inmates of state institutions it is found that 169,296 or 69.1 per cent are native and 69,984 or 28.6 per cent are foreign born, the rest being doubtful. The rate per 100,000 of native white of native parentage is 159.8, for native white of foreign parentage 207, for foreign born whites 513.9. The highest rates of incidence are found in immigrants from: Turkey in Asia, males 1,991.5, females 1,345; Austria, males 1,072.9, females 857.9; Ireland, males 838.3, females, 1,086.1; Finland males 1,007.7, females 804.4. The lowest rates are found in Yugoslavia with, males 191.8, females 100.8 and Mexico, males 198.7, females 128.2 per 100,000.

From the above it might well be argued that our immigration laws would stand a rather close scrutiny in connection with the increasing number of mental incompetents.

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