Sterilization of Criminals

J. B. Bussey

University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Constitutional Law Commons, and the Criminal Procedure Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation


Available at: https://uknowledge.uky.edu/klj/vol1/iss2/2

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
One of the most noteworthy innovations in the field of criminology is the sterilization of certain types of criminals. From a historical point of view, very little can be said, owing to its application to criminals being of a recent age, and the subject must be approached with an element of uncertainty as to just how valuable any suggestions may prove to be.

Sterilization is the result of an operation known as vasectomy. Vasectomy was first practiced as an operation for the relief of prostatic disease, taking the place of castration. The use of this operation for the purpose of sterilization was substituted for castration, which had been advocated for a number of years by those believing in the right of society to protect itself against the propagation of defectives by interfering with the procreative function.

Castration has been severely condemned by various writers and lecturers throughout the country as being a method of slow killing; rendering the patient more susceptible to disease, producing a slowness of intellect, bringing about a depression of spirits and dreariness of disposition. But history even refutes that imputation from the time of St. Matthew (Ch. 19:12) down to the present time. Castration has been practiced and the eunuch held positions of responsibility and trust. Narses, the famous general under Justinian, was a eunuch, and history records the fact that Aristotle offered sacrifices to Hermos, governor of Atarnea in Mysia. But assuming that castration is a violent and repulsive method, let us look at sterilization from the side of vasectomy.

First let us see what vasectomy is: It is the ligation or severing of the vas deferens, or the corresponding tubes in the female. It is a very simple operation and can be performed by any skilled surgeon in a few minutes without any danger to the health or life of the patient.

Some years ago Dr. H. C. Sharp, of Indianapolis, Ind., formerly physician at the Indiana State Reformatory, Jeffersonville, Ind., began an experiment on the sterilization of criminals in that reformatory, and I quote from a paper on vasectomy read by him before the American Medical Association at Atlantic City, N. J., June, 1909:

"Since October, 1899, I have been performing an operation known as vasectomy, which consists of ligating and resecting a small portion of the vas deferens. This operation is indeed very simple and easy to perform. I do it without administering an anesthetic, either general or local. It requires about three minutes' time to perform the operation and the subject returns to his work immediately, suffering no inconvenience, and is in no way impaired for the pursuit of life, liberty and happiness, but is effectively sterilized. I have been doing this operation for over nine years. I have 456 cases that afforded splendid opportunity for post-operative observation, and I have never seen any unfavorable symptom. There is no atrophy of the testicle, there is no cystic degeneration following, but on the contrary, the patient becomes of a more sunny disposition, brighter of intellect, ceases excess-masturbation, and advises his fellows to submit to the operation for their own good. And here is where this method of preventing procreation is so infinitely superior to all
others proposed—that it is endorsed by the subjected persons. All the other methods proposed place restrictions and, therefore, punishment upon the subject; this method absolutely does not. There is no expense to the state, no sorrow or shame to the friends of the individual, as there is bound to be in the segregation idea.

“There is a law providing for the sterilization of defectives in Indiana, and it is being carried out in the Indiana Reformatory. I regret very much that it is not being followed up in the other institutions of the state, but there is no doubt that it will come in a very short time.

“After observing nearly 500 males in whom I had severed the vas deferens I am prepared to state that there is not only a diminution of the muscular and nervous fatigue resulting from muscular exertion, but also lessening of fatigue sensation and a decided increase of energy and well being. I have observed splendid results in cases of neurasthenia.”

If my information is correct, there have been over 800 persons subjected to this operation, 200 of which were at their own request, and the results in all cases are said to have been good. As a result of Dr. Sharpe’s experimental operations the legislature of Indiana in March, 1909, passed a bill, the text of which is as follows, giving legal status to the operation:

PREAMBLE.—Whereas, heredity plays a most important part in the transmission of crime, idiocy and imbecility:

Therefore, be it enacted by the General Assembly of the state of Indiana, that on and after the passage of this act it shall be compulsory for each and every institution in the state, entrusted with the care of confirmed criminals, idiots, rapists and imbeciles, to appoint upon its staff, in addition to the regular institutional physician, two skilled surgeons of recognized ability, whose duty it shall be, in conjunction with the chief physician of the institution, to examine the mental and physical condition of such inmates as are recommended by the institutional physician and board of managers. If, in the judgment of this committee of experts and the board of managers, procreation is inadvisable and there is no probability of improvement of the mental condition of the inmate, it shall be lawful for the surgeons to perform such operation for the prevention of procreation as shall be decided safest and most effective. But this operation shall not be performed except in cases that have been pronounced unimprovable.”

The state of Oregon in 1909 enacted a similar law, and California and Connecticut have also passed laws to this effect. In the early part of 1909 the General Assembly of the state of Illinois was asked to pass a bill legalizing the sterilization of criminals of certain types, and although this bill was endorsed by the Chicago Medical Society, the Physicians’ Club, Chicago, and the South Side Medical Society, it failed to become a law. This subject has also been agitated in other states, and has been a topic of discussion in many organizations interested in penological and medical matters.

It will be seen by the work already done, and the number of states that have passed the law legalizing the sterilization of criminals, that it has passed beyond the speculative and theoretical stage and has become an important feature in modern criminology.
The advocates of the sterilization of criminals after the manner indicated justify the operation and assert its necessity as follows:

(1). The fact that of the public charges a great number are recruited from the defective classes, and that defects, physical and mental, are transmitted to the offspring.

(2). That if a defective marries a defective, the children will inherit the defects or defective strain of both parents, and be of a still more defective type. The natural tendency is for the abnormal to mate with the abnormal, consequently defectives are rapidly increasing in number as well as becoming more pronounced in type.

(3). That this class of persons is prolific, as they know no law of self-restraint, and refuse to take into consideration their ability to care for their offspring. It is also claimed that these ranks are recruited from those suffering from nervous, mental or physical disease, including in this class the children of syphilitics and of victims of alcoholic and drug habits or immoral excesses.

(4). That the restriction of propagation is necessary for the relief of this condition. It is observed that the moral force of an educated public opinion or law, opposed to the marriage of defectives, can not prevent the propagation of defective offspring, for while there might be fewer marriages of this type, sexual intercourse would not be discontinued, the procreation would not be prevented to any appreciable degree, and the offspring would be illegitimate as well as defective. Laws have been made in various states to restrict the marriage of defectives. In Minnesota no woman under the age of 45 years, or a man of any age, except he marry a woman over 45 years of age, either of whom is epileptic, imbecile, feeble-minded or afflicted with insanity, may intermarry or marry any other person. Michigan, Delaware, Connecticut, Indiana, New Jersey and North Dakota have also passed such laws, but they have not proved satisfactory or effective and do not furnish the remedy for the evil.

(5). That the absolute segregation in colonies and industrial refuges of so great a number of existing defectives would necessitate the expenditure of enormous sums of money.

Mr. Henry M. Boies in his book, "Prisoners and Paupers," gave voice to much the same line of reasoning in support of castration for defectives which applies equally to vasectomy. We quote from Mr. Boies, as follows:

"By carefully providing for its degenerates and abnormals in comfortable prisons, asylums and almshouses, giving them the advantages of the highest knowledge and science of living, society unwittingly aggravates the evil it seeks to alleviate. It maintains alive those who would perish without its aid. It permits their reproduction and multiplication. It fosters with more attention than it gives it better types, the establishment and increase of an abnormal and defective class. It not only perpetuates by care, but encourages by permitting unrestricted 'breeding in' among them, the unnatural spread and growth of a social gangrene of fatal tendencies. It is assuming oppressive alarming proportions which begin to be felt in the whole social organization. In terror, our advancing civilization begins to inquire if there be no way of counteraction, consistent with its highest benevolence, by which this abnormality may be avoided, criminality and pauperism restored to natural proportions, or to that ratio of increase which may be the inevitable result of ignorance and excess in living."
The abnormal does not want children, has no affection for them, and gets rid of them as soon as possible if they come. If this were not so, their offspring, being abnormal, weak, sickly, diseased, deformed, idiotic, insane or criminal, doomed to a burdensome and suffering existence or an early death, are a curse rather than a comfort to their parents, so that in no sense could the deprivation of these organs inflict injury or damage to criminal or pauper. On the contrary, they would be enabled thereby to enjoy many comforts and privileges, and be relieved from many restraints at present necessarily imposed upon them. The range of their enjoyment would, in fact, be greatly enlarged, both in confinement and at liberty. Many, indeed, might be allowed freedom, who are now closely confined.

The remedy we suggest would certainly be effectual, an immeasurable benefit to the human race, the exercise of an inherent right which really injures none, and, moreover, it appears to have become an imperative duty which society owes to its own preservation, which may not be neglected without actual sin.

Now in the past few years, especially at the time when rape was running rampant throughout the South, many champions of castration as a punishment for past crimes and as a deterrent for future crimes, arose. It was thought this would have a restraining influence on those tempted to commit this monstrous crime, that it would be especially frightful to a negro, and that it would in some degree arrest the propagation of undesirable citizens. Dr. Sharp, in support of such a position, cites the following authorities to substantiate his position:

Sir John McDougall, Chairman of the Asylum Committee, London County Council, has said: “Some day we shall come to the conclusion that some physical means should be employed to prevent the unfit from producing children.”

Dr. Bevan Lewis of England: “Nothing short of such radical means can stem the tide of degeneracy.”

Dr. Barr in his work, “Mental Defectives,” says: “Let sterilization be once legalized, not as a penalty for crime, but as a remedial measure preventing crime and tending to future comfort and happiness of the defective, let the practice become common for young children immediately upon being adjudged defective by competent authority properly appointed, and the public mind will accept it as an effective means of race preservation. It would soon be regarded, just as quarantine, a simple protection against ill.”

Dr. Charles V. Carrington, writes of sterilization of habitual criminals: “Our juvenile courts, reformatories, probation officers, societies for aid to the discharged convicts—all are doing splendid work. Prevention is practically their motto, and is the motto of every person interested in the handling of criminals. After ten years of investigation as prison surgeon and during that time seeing and treating thousands of our criminals, black and white: I am unreservedly of the opinion that sterilization of our habitual criminals is a proper method.”

Society arrests and confines the leper, the victim of smallpox, yellow fever, cholera and typhoid, and treats them according to its own will, with or without their consent. It does not hesitate to remove a gangrened limb, a diseased organ from the body of a person if it is necessary; it shuts up the insane, the imbecile, the criminal for the public protection; it inflicts punish-
ment of various degrees, compels men to labor without pay for its good; even deprives men of life if it pleases; assumes arbitrary control of the life, liberty and happiness of an individual if it considers it necessary for the public welfare, and no reasonable human being questions its right or duty to do these things. And at the same time it allows its deformed and diseased in mind, body and soul to disseminate social leprosy and cancer with impunity, while the skill of its surgeons could prevent the infection by an operation almost as simple as vaccination. The wonder is that the remedy which we propose should have been so long delayed.

CASE AND COMMENT

Pooling Agreements May Be Enforced in Equity.—Tobacco pools were greatly strengthened February 18th, by a decision in the Kentucky Court of Appeals, holding that pooling agreements are such as can be enforced in equity by injunction, when the pooling contracts contain a provision that “upon failure to fully comply with the terms and agreement of the contract the pooler agrees to pay the society as liquidated damages 20 per cent of the value of the tobacco for the benefit of the members of the society.” The case was the Grant County Board of Control and the Burley Tobacco Society against A. S. Allphin, in which the Fayette Circuit Court is reversed. Allphin was accused of shipping his tobacco to Lexington to be sold out of the pool. His pooling contract contained such provision, and the court said the question presented was “whether a court of equity may enjoin a breach of contract, notwithstanding the provision for specific damages therefor,” and decided that the answer depends upon whether it was the intention of the parties that the contract should be fulfilled or whether it was to be optional either to fulfill the contract or pay the sum stipulated as liquidated damages. In this case the court held that it must have been the intention of the parties to fulfill the contract, and that the sum stipulated was merely security that the contract would be lived up to.

“The very life of the undertaking on which the appellees were engaged depended upon whether or not a considerable number of growers would pool their tobacco for sale through the appellants,” said the court. “If the poolers were allowed to sell in violation of the contract, the aim of the pool would be defeated, and the sum agreed upon would not liquidate the damage or be an adequate compensation.”

Special Damages—How Pleased—Evidence.—It was held in Lexington & Eastern Ry. Co., et al. vs. Fields, 152 Ky. 19, that if a plaintiff in a personal injury case desires to recover for medical expenses incurred in the treatment of the injuries complained of, he should state in his pleading the amount so expended, or the amount that he has expended and that it will be necessary to expend in securing necessary medical attention. Blue Grass Traction Co. vs. Ingles, 140 Ky. 488. A previous petition averring that the plaintiff incurred —— dollars in expense in medical treatment is not sufficient to authorize a recovery for any expense on account of medical treatment, as it does not show that any sum was expended for this purpose. Lexington Railway Co. vs. Britton, 130 Ky. 676. When a matter in issue is so defectively pleaded