



## INVOLUNTARY STERILIZATION IN THE UNITED STATES: A SURGICAL SOLUTION

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### ABSTRACT

*Although the eugenics movement in the United States flourished during the first quarter of the 20th Century, its roots lie in concerns over the cost of caring for "defective" persons, concerns that first became manifest in the 19th Century. The history of state-supported programs of involuntary sterilization indicates that this "surgical solution" persisted until the 1950s. A review of the archives of prominent eugenicists, the records of eugenic organizations, important legal cases, and state reports indicates that public support for the involuntary sterilization of insane and retarded persons was broad and sustained.*

*During the early 1930s there was a dramatic increase in the number of sterilizations performed upon mildly retarded young women. This change in policy was a product of the Depression. Institutional officials were concerned that such women might bear children for whom they could not provide adequate parental care, and thus would put more demands on strained social services. There is little evidence to suggest that the excesses of the Nazi sterilization program (initiated in 1934) altered American programs. Data are presented here to show that a number of state-supported eugenic sterilization programs were quite active long after scientists had refuted the eugenic thesis.*

### BACKGROUND

AT THE CLOSE of the 19th Century in the United States several distinct developments coalesced to create a climate favorable to the rise of sterilization programs aimed at criminals, the insane, and feeble-minded persons. Evolutionary theory demanded a biological view of man. Francis Galton (Darwin's cousin), an eminent scientist, invented the science of eugenics (Galton, 1869, 1874, 1883) which he fitted to the tenets of Darwinism.

In the United States concern about defective persons could be found in many quarters. Southern whites who opposed miscegenation sought intellectual proof that the Negro was inferior. American criminologists and prison officials (Boies, 1893) were heavily influenced by Lombroso's arguments that most criminal behavior was biologically determined (Lombroso-Ferrero, 1972). Among the physicians and social workers who ran the nation's asy-

lums there was growing despair as the mid-century thesis (Sequin, 1846) that the retarded and insane were educable faded. About 1880, physicians who were doing research into the causes of idiocy and insanity developed the notion of a "neuropathic diathesis" (Kerlin, 1881) that relied on hereditary factors to explain problems as diverse as alcoholism, epilepsy, and crime. As one investigator wrote, "there is every reason to suppose epilepsy in the children may have its hereditary predisposition in some form of habitual crime on the part of the parent" (Clarke, 1879).

The most important event preceding the rise of sterilization programs was probably the publication of Richard Dugdale's (1875) study of the "Jukes," a New York family with a propensity for almshouses, taverns, brothels, and jails. The "Jukes" spawned a new field in sociology: extended field studies of degenerate families, a field that reached its apogee at the Eugenics Record Office (ERO) in Cold

Spring Harbor (Danielson and Davenport, 1912; Estabrook and Davenport, 1912). From 1910 through 1914 more than 120 articles about eugenics appeared in magazines, a volume of print making it one of the nation's favorite topics.

Soon after becoming Director of the Station for Experimental Evolution at Cold Spring Harbor, Charles B. Davenport, one of the earliest American champions of Mendelian genetics, moved to apply the principle of particulate inheritance to humans. Among his most important colleagues was H. H. Goddard, who published an immensely popular study of the "Kallikaks," a family that he claimed had an eminent line and a degenerate line running in parallel over many generations. The book did much to rationalize principles of negative eugenics (Goddard, 1912).

During the period from 1890 to 1917 the United States was washed by a tidal wave of immigrants. Assimilation was painful. The economy was so perturbed by the dramatic expansion of the labor pool that, despite a commitment to internationalism, even the great unions called for restrictions on immigration (Higham, 1965). From 1875 on, proposals to curb immigration were constantly before the Congress. Starting with the "Chinese Exclusion Acts" in the early 1880s, the federal government gradually built its legal seawalls higher. During the 1890s the Boston-based Immigration Restriction League sought to justify legal barriers to entry on the grounds that some races were inferior to the average American stock (Ludmerer, 1972). This argument became a major issue in American eugenics.

The late 19th Century spawned numerous plans to control the "germ plasm" of unfit individuals. In many states young retarded women were institutionalized during their reproductive years. State laws were passed to forbid marriage by alcoholics, epileptics, the retarded, and persons with chronic diseases (Davenport, 1913a). Some legislatures considered proposals to castrate criminals (Daniel, 1907), and a few superintendents of asylums actually engaged in mass castration (Daniel, 1894). It was at this juncture that a technological innovation helped to reorient social policy.

#### THE SURGICAL SOLUTION

The first American case report of a vasc-

tomy was published by Ochsner, a young Chicago surgeon. Dissatisfied with castration as a therapy for severe prostatic hypertrophy, he guessed that cutting the vasa deferentia might cause the tissue to involute. But when his patients told him that after the vasectomy they noted no impairment of sexual desire or function, he immediately grasped the eugenic implications of the new operation. Ochsner argued that vasectomy could eliminate criminality inherited from the "father's side" and that it "could reasonably be suggested for chronic inebriates, imbeciles, perverts and paupers" (Ochsner, 1899).

Three years later Sharp, a surgeon at the Indiana Reformatory, reported the first large study on the effects of vasectomy. He claimed that his 42 vasectomized patients felt stronger, slept better, performed more satisfactorily in the prison school, and felt less desire to masturbate! Sharp urged physicians to lobby for a law to empower directors of state institutions "to render every male sterile who passes its portals, whether it be almshouse, insane asylum, institute for the feeble-minded, reformatory or prison" (Sharp, 1902:414).

During the next few years there was a spate of articles by physicians claiming that vasectomy offered a solution to the problem of limiting the births of defective persons. Some physicians began to lobby vigorously for mass sterilization. For example, a Philadelphia urologist drafted a compulsory sterilization law that passed both legislative bodies in Pennsylvania, but died under a gubernatorial veto (Mears, 1909).

In 1907 the Governor of Indiana signed the nation's first sterilization law. It initiated the involuntary sterilization of any habitual criminal, rapist, idiot, or imbecile committed to a state institution and diagnosed by physicians as "unimprovable." After having operated on 200 Indiana prisoners, Sharp quickly emerged as the national authority on eugenic sterilization. A tireless advocate, he even underwrote the publication of a pamphlet, "Vasectomy" (Sharp, 1909). In it he affixed tear-out post cards so that readers could mail a preprinted statement supporting compulsory sterilization laws to their legislative representatives!

Although the simplicity of vasectomy focused their attention upon defective men, the eugenicists were also concerned about defec-

tive women. Salpingectomy, the surgical closure of the Fallopian tubes, or oviducts, was not yet perfected as a surgical operation, and the morbidity after intra-abdominal operations was high. Eugenic theoreticians had little choice but to support long-term segregation of feeble-minded women. They were, however, comforted in their belief that most feeble-minded women became prostitutes and were frequently rendered sterile by pelvic inflammatory disease (Ochsner, 1899).

Pro-sterilization arguments peaked in the medical literature in 1910, when roughly one-half of the 40 articles published since 1900 on the subject appeared. These articles almost unanimously favored involuntary sterilization of the feeble-minded. As time went by, physician advocates suggested casting the eugenic nets more widely. Appeals to colleagues that they lobby for enabling laws were commonly heard at annual meetings of state medical societies (Reilly, 1983a). At the annual meeting of the American Medical Association, Sharp enthralled his listeners with reports on a series of 456 vasectomies performed upon criminals in Indiana. After hearing him, Rosenwasser, a New Jersey official, announced that he would seek a bill for the compulsory sterilization of habitual criminals in his state (Sharp, 1907). New Jersey enacted such a law eighteen months later.

The most successful physician lobbyist was F. W. Hatch, Secretary of the State Lunacy Commission in California. In 1909, he drafted a sterilization law and helped to convince the legislature (which was highly sensitive to eugenic issues because of the influx of "racially inferior" Chinese and Mexicans) to adopt it. After the law was enacted, Hatch was appointed General Superintendent of State Hospitals and was authorized to implement the new law. Until his death in 1924, Hatch directed eugenic sterilization programs in ten state hospitals and approved 3000 sterilizations—nearly half of the nation's total (Popenoe, 1933).

By 1912, support for engenal sterilization was widespread among physicians. Even eminent professors such as Lewellys Barker (who succeeded Osler as Physician-in-Chief at The Johns Hopkins Hospital), cautiously favored such programs (Barker, 1910). G. F. Lydston, a prominent Chicago surgeon, was an out-

spoken advocate of radical eugenics policies (Lydston, 1912). The editor of the *Texas Medical Journal* regularly published pro-sterilization articles (Daniel, 1909).

Between 1907 and 1913, 16 legislatures passed sterilization bills, 12 of which became law and 4 of which were vetoed. The evidence is circumstantial but strong (Reilly, 1983a) that a mere handful of activists played a key role in pushing this legislation. Sharp's work in Indiana and Hatch's efforts in California were obviously influential. In New Jersey, Dr. David Weeks, Chief Physician at the Village for Epileptics, lobbied for and later implemented a sterilization law (*Smith v. Board of Examiners*, 1913). In Oregon, an activist woman physician spearheaded a pro-sterilization drive (Owens Adair, 1905).

#### HARRY HAMILTON LAUGHLIN

The history of American eugenics, especially of involuntary sterilization, is the chronicle of a small, dedicated group of activists whose ideas attracted widespread interest in society. At the center stood Harry Hamilton Laughlin, a Missouri school teacher recruited by Davenport in 1910, and a man who devoted his life to the cause of eugenics (Haller, 1973).

In 1907 Laughlin, after some restless years of high-school teaching, obtained a post as a biology instructor at a small college. Excited by the rediscovery of Mendelian genetics, he plunged into breeding experiments and wrote to Davenport for advice in analyzing his results (Laughlin, 1907). Correspondence led to an invitation to study genetics at Cold Spring Harbor for the summer, and Laughlin returned from his visit to New York with renewed commitment to genetics. Over the next two years he assisted Davenport in gathering data for his studies. In the autumn of 1910 he moved to Cold Spring Harbor to become the first and only Superintendent of the Eugenics Record Office (ERO), a post he held for 29 years (Hassencahl, 1980).

Laughlin worked tirelessly to develop the ERO. His two major tasks were (1) to train an army of field workers (young women who would work at state hospitals and asylums to amass pedigree studies), and (2) to store and index the massive amount of material that this army generated. A meticulous person, Laughlin triple-indexed the pedigrees and stored

them in fire-proof vaults. Today these hundreds of thousands of cards slumber peacefully in a cellar at the University of Minnesota. When Laughlin arrived at Cold Spring Harbor, the first field workers were already identifying persons who might be at high risk for bearing feeble-minded children. By the close of 1912, when he participated in a committee to study "the best practical means of cutting off the defective germ plasm in the American population" (Hassencahl, 1980: 95), Laughlin strongly favored involuntary sterilization. This blue-ribbon group concluded that "approximately 10 percent of our population, primarily through inherent defect and weakness, are an economic and moral burden on the 90 percent and a constant source of danger to the national and racial life" (Davenport, 1913b: 94). Laughlin reduced the committee's work to publishable form (Laughlin, 1914a,b). The longer of the two monographs, an exhaustive legal study, included a model bill that tried to cast the eugenics net as widely as possible without violating the U.S. Constitution. With this publication Laughlin emerged as a leading figure in the eugenics movement. He began to receive important speaking invitations, such as one to the First National Conference on Race Betterment, in January, 1914 (Hassencahl, 1980).

The war years (1914–1918) slowed the eugenics movement. American eyes turned to the trenches, and the tide of immigrants from southeastern Europe subsided. For Laughlin it was a period of consolidation. Eager to rub shoulders with leading geneticists, he earned a doctorate in biology at Princeton University and published his only really scientific papers (on mitosis in the root tip of the onion, e.g., Laughlin, 1918).

During the early 1920s Laughlin became the nation's leading expert on the twin eugenic policies of restrictive immigration and selective sterilization. In 1920 the Bureau of the Census released the results of a demographic study of 634 "institutions for the care of defective, dependent and delinquent classes" (Hassencahl, 1980: 171) that was based largely on survey work that he had performed for it. His finding that immigrants were over-represented in these institutions came to the attention of the House Committee on Immigration and Naturalization. In April, 1920, Laughlin tes-

tified before that body, and warned that the nation's hospitals would soon be filled with immigrants (Laughlin, 1923a). His testimony provided Albert Johnson, the Chairman of the Committee, with the scientific ammunition he needed in his campaign for a restrictive immigration law. In 1921 he appointed Laughlin an "Expert Eugenical Agent" and charged him to study "alien inmates and inmates of recent foreign extraction in the several state institutions for the socially inadequate" (Hassencahl, 1980: 182). The goal was to show irrefutably that the foreign-born were draining American resources.

The plan was simple. Starting with a set of census figures that described the portion of the American population represented by each national group (e.g., Italian, Swedish), Laughlin calculated the number of each group that he expected to find in the institutional population. If a greater-than-expected number appeared in his survey of 93 institutions, then that group was contributing a disproportionate share of socially inadequate citizens to the American melting pot. Laughlin (1923b) found only 91 per cent of the expected number of native whites in the institutional sample, but determined that the institutions housed 125 per cent of the expected number of foreign-born persons and 143 per cent of those to be expected from southeastern Europe. He concluded that while "making all logical allowances for environmental conditions, which may be unfavorable to the immigrant, the recent immigrants (largely from southern and eastern Europe), as a whole, present a higher percentage of inborn socially inadequate qualities than do the older stocks" (Laughlin, 1923b: 755). As the Committee commissioned no other studies, Laughlin's findings helped to build a staunchly pro-restrictionist record.

Laughlin's report may not have swayed many votes in an already restrictionist Congress (the Immigration Act of 1921 preceded his work), but it did help to entrench a national-origins quota system that was much more ambitious than earlier plans. The system, which limited the annual immigration of people from each European country to three per cent of the number of Americans that had claimed that country as place of origin in the Census of 1890, sharply curtailed the flow from southeastern Europe (Garis, 1927). Laughlin's

report rationalized that reference base. He showed that people from southeastern Europe were difficult to assimilate. Would it not be unfair to open the gates to those who were unlikely to adapt to new ways? Would it not be unfair to bias immigration flow in favor of newcomers? The succeeding Immigration Act of 1924 was the greatest triumph of the eugenics movement.

In 1920 the indefatigable Laughlin finished his exhaustive study of eugenical sterilization. The 1300-page manuscript, which strongly favored involuntary sterilization of institutionalized persons, could not be published without philanthropic support. Both the Carnegie Institution (Hassencahl, 1980) and the Rockefeller Foundation (Davis, 1921) refused to underwrite the cost. At this juncture, Harry Olson, a Chicago judge and a staunch eugenicist, arranged for the Chicago Municipal Psychopathic Laboratory (devoted to biological studies of crime) to publish the work (Laughlin, 1922). It solidified Laughlin's standing with the inner circle of eugenicists.

Throughout the 1930s Laughlin was a tireless advocate of sterilization, but his stature in the scientific community deteriorated as the science of genetics matured. After Davenport retired in 1934, John C. Merriam, President of the Carnegie Institution of Washington, began to reduce Laughlin's budget at the Eugenics Record Office. Nevertheless, Laughlin remained a prominent figure and was frequently called upon to advise civic groups about eugenic policy. For example, he acted as special consultant to the State of Connecticut in its survey of "human resources." Then, in 1938, President Merriam cut off Laughlin's research funds and guaranteed his salary for only three months longer (Merriam, 1938). In a matter of days Laughlin ended his 29 years at Cold Spring Harbor, and the Eugenics Record Office was closed (Hassencahl, 1980). Laughlin died in 1942.

#### THE EARLY STERILIZATION LAWS

In studying the rapid rise of the early sterilization legislation, one is hampered by a paucity of state legislative historical materials. Fortunately, a few studies (Rhode Island State Library Legislative Reference Bureau, 1913) shed light on the origin of this legislation. The

writings of Harry H. Laughlin also provide much material.

Four small but influential groups lobbied hard for these laws: physicians (especially those working at state facilities), scientific eugenicists (including prominent biologists like David Starr Jordan, President of Stanford University), lawyers and judges, and a striking number of members of the nation's richest families. There were, of course, opponents as well. But, except for a handful of academic sociologists and social workers, they were less visible and less vocal. Having already mentioned some scientists and physicians, I shall briefly note the other supporters of this legislation.

Among the influential lawyers who pushed for sterilization laws was Eugene Smith, President of the National Prison Association. He viewed sterilization as the only solution to a dangerously spiraling prison budget (Smith, 1908). Warren Foster (1909), Senior Judge of New York County, argued in popular periodicals that recidivists should be sterilized. He assured his readers that scientists had proved that criminality was hereditary, and that a compulsory sterilization law would not violate the U.S. Constitution. His campaign provoked a critical editorial by *The New York Times*, but in 1912 New York did enact a sterilization law.

The enthusiastic support that America's wealthiest families provided to the eugenics movement is a curious feature of its history. First among many was Mrs. E. H. Harriman, who almost single-handedly supported the Eugenics Record Office in its first five years. The second largest financial supporter of the ERO was John D. Rockefeller, who gave it \$400 each month (Davenport, 1911). Other famous eugenic philanthropists included Dr. John Harvey Kellogg (brother to the cereal magnate), who organized the First Race Betterment Conference, held in 1914, and Samuel Fels, Philadelphia soap manufacturer. Theodore Roosevelt was an ardent eugenicist, one who urged Americans to have large families in order to avoid racial dilution by the weaker immigrant stock (Roosevelt, 1914).

Of the vocal opponents of the eugenics movement, Alexander Johnson and Franz Boas were among the most important. Johnson, leader of the National Conference of Charities and Correction, thought that sterilization was less humane than institutional

segregation. He dreamed of "orderly celibate communities segregated from the body politic," where the feeble-minded and insane would be safe and could be largely self-supporting (Johnson, 1909). Boas, a Columbia University anthropologist, conducted a special study for Congress to determine whether immigrants were actually being assimilated into American culture. His findings (Immigration Commission, 1910) argued that Hebrews and Sicilians were easily assimilable—a conclusion that was anathema to most eugenicists.

The extraordinary legislative success of proposals to sterilize defective persons suggests that there was substantial support by the general public for such a plan. Between 1905 and 1917 the legislatures of 17 states passed sterilization laws, usually by a large majority vote. Most were modeled after the Indiana plan, which covered "confirmed criminals, idiots, imbeciles, and rapists." In Indiana, if two outside surgeons agreed with the institution's physician that there was no prognosis for "improvement," such persons could be sterilized without their consent. In California, the focus was on sterilizing the insane. The law permitted authorities to condition a patient's discharge from a state hospital upon a consent to undergo sterilization. As the hospitalization was of indeterminate length, people rarely refused sterilization, so the consent was rendered nugatory (Laughlin, 1922).

How vigorously were these laws implemented? From 1907 to 1921 there were 3233 sterilizations performed under state laws. A total of 1853 men (72 by castration) and 1380 women (100 by castration) were sterilized. About 2700 operations were performed on the insane, 400 on the feeble-minded, and 130 on criminals. California's program was by far the largest (Laughlin, 1922).

Sterilization programs ebbed and flowed according to the views of key state and institutional officials. For example, in 1909 the new Governor of Indiana quashed that state's active program. In New York, activity varied from institution to institution. In the State Hospital at Buffalo the superintendent, who believed that pregnancy exacerbated schizophrenia, authorized 12 hysterectomies, but in most other hospitals no sterilizations were permitted, despite the state law. Similar idiosyn-

cratic patterns were documented in other states (Laughlin, 1922).

Although the activities of persons opposed to sterilization are difficult to document, the record of lawsuits attacking the constitutionality of sterilization laws makes it clear that the courts were in general unfriendly to eugenic policy. Between 1912 and 1921 eight laws were challenged, and seven were held to be unconstitutional. The first two cases were brought by convicted rapists, who argued that sterilization violated the Eighth Amendment's prohibition of cruel and unusual punishment. The Supreme Court of Washington, impressed with Dr. Sharp's reports that vasectomy was simple, quick, and painless, upheld its state law (*State v. Feilen*, 1912). But, a few years later, a federal court in Nevada ruled that vasectomy was an "unusual" punishment and struck down a criminal sterilization law (*Mickle v. Henrichs*, 1918).

In six states (New Jersey, Iowa, Michigan, New York, Indiana, and Oregon), constitutional attacks were leveled at laws that authorized sterilization of feeble-minded or insane persons who resided in state institutions. The plaintiffs argued that laws aimed only at institutionalized persons violated the Equal Protection Clause and that the procedural safeguards were so inadequate that they ran afoul of the Due Process Clause. All six courts invalidated the laws, but they divided in their reasoning. The three that found a violation of the Equal Protection Clause did not clearly oppose eugenical sterilization. Their concern was for uniform treatment of all feeble-minded persons. The three that relied on due-process arguments to reject the laws were more antagonistic to the underlying policy. An Iowa judge characterized sterilization as a degrading act that could cause "mental torture" (*Davis v. Berry*, 1914).

The New York case was especially interesting because prominent eugenicists testified. It grew out of a dispute between the superintendent of the Rome Custodial Asylum, who opposed sterilization, and the institution's Board of Examiners, who favored it. To resolve the matter, the Board voted to sterilize a young feeble-minded man named Frank Osborn, who quickly sued. At the trial, the superintendent argued that there were no convincing data to

support assertions that the prevalence of feeble-minded people was rising; he argued further that vasectomy might harm "high grade" feeble-minded men by encouraging immorality. Of the several eugenicists who testified, Davenport, the most important, adopted the most conciliatory position. Perhaps sensing defeat, he favored segregation over involuntary sterilization. The court, concerned that the law sacrificed individual rights to "save expense for future generations," struck it down (In re *Thompson*, 1918).

From 1918 to 1921, the years during which these cases were decided, sterilization laws faded as quickly as they had appeared. One reason why the courts were less sympathetic to sterilization laws than the legislatures had been was that sterilization petitions (like commitment orders) touch the judiciary's historic role as protector of the weak. The judges demanded clear proof that the individual would benefit from being sterilized. Another reason may have been that scientific challenges to eugenical theories about crime began to appear. For example, two physicians who studied behavior found "no proof of the existence of hereditary criminalistic traits" (Spaulding and Healy, 1914: 42).

#### THE 1920s

After World War I arguments that eugenical sterilization programs were needed to protect the nation's "racial strength" resurfaced. The major impetus was the sudden arrival of hundreds of thousands of immigrants from southeastern Europe and Russia—people with languages and cultures that were unfamiliar to Americans (Ludmerer, 1972). The xenophobia triggered by this massive influx reinforced concern for the dangers of miscegenation and helped to renew interest in biological theories of crime. Some eugenicists wrote inflammatory essays. Madison Grant, a wealthy New Yorker and conservation enthusiast, argued that there were a multitude of scientifically distinct races and that admission of "inferior" types threatened the nation (Grant, 1916). Grant's was the most prominent of a whole genre of popular essays warning Americans to beware of diluting their racial vigor (Stoddard, 1920).

The concurrent concern for miscegenation

reflected the weakening of Southern white society's control over the lives of Blacks. Of course, anti-miscegenation laws are as old as slavery itself (Wadlington, 1966). After the Civil War, however, the burgeoning "colored" population (largely a product of institutionalized rape before then) stimulated the enactment of new laws that redefined as "Negro" persons with ever smaller fractions of black ancestry (Mencke, 1959). This trend culminated in 1924, when Virginia adopted a law that defined as White "one who has no trace whatsoever of any blood other than Caucasian." It forbade the issuance of marriage licenses until officials had "reasonable assurance" that statements as to the color of both man and woman were correct, it voided all existing interracial marriages (regardless of whether they were contracted legally elsewhere), and it made cohabitation by such couples a felony. The Virginia Racial Integrity Act was enforced by Walter Plecker, Director of the Bureau of Vital Statistics, a zealous eugenicist who corresponded regularly with Laughlin (Reilly, 1983b).

The early 1920s were also marked by an interest in biological theories of criminality somewhat akin to those legitimized in the 19th Century by Lombroso. Orthodox criminologists were not responsible for this development (Parmelee, 1918; Sutherland, 1924). Tabloid journalists did foster a popular interest in hereditary criminality. *World's Work*, a popular monthly, featured five articles on the biological basis of crime. One recounted the innovative efforts of Harry Olson, Chief Justice of the Chicago Municipal Court. Convinced that most criminals were mentally abnormal, Olson started a Psychopathic Laboratory and hired a psychometrician to develop screening tests to identify people with criminal minds (Strother, 1924).

During the 1920s many eugenics clubs and societies sprouted, but only two, the American Eugenics Society (AES) and the Human Betterment Foundation (HBF), exerted a significant influence on sterilization policy. The AES was conceived at the Second International Congress of Eugenics in 1921 by Henry Fairfield Osborn, President of the American Museum of Natural History, together with a small group of colleagues. By 1923 the new so-

ciety was sufficiently well organized to lobby against a New York bill supporting special education for the handicapped, an idea that it considered to be dysgenic (AES Memorandum, 1923).

In 1925 Irving Fisher, a Yale professor, relocated the AES headquarters in New Haven. For the next few years its major goal was public education. The AES published several pamphlets, sponsored "fitter family" contests and underwrote the cost of several book projects by its members (Whitney, 1928). The Depression of the 1930s caused a great fall in donations to the Society and when Ellsworth Huntington, a Yale geographer, became president of the society in 1934, it was moribund. With the aid of Frederick Osborn, a wealthy relative of the founder, Huntington breathed new life into the organization. Huntington and Osborn redirected the aims of the AES toward "positive" eugenics policies such as family planning and personal hygiene (Huntington, 1935). After World War II, the Society evolved into one for the study of social biology and concerned itself with issues such as population, nutrition, and education. The major influence of the AES on sterilization policy was in its early days, when some of its educational materials did favor sterilization laws.

The wealthiest eugenics organization was the Human Betterment Foundation (HBF), started by a California millionaire named Ezra Gosney. In 1926 Gosney convened a group of experts to study the efficacy of California's sterilization program. This group confirmed the long-term safety of undergoing sterilization and concluded that California had benefited from the sterilization of prison and other institutional inmates. Gosney came to believe that a massive sterilization program could reduce the number of mentally defective persons by one-half in "three or four generations" (Gosney and Popenoe, 1929). During the 1930s the HBF was the most vocal advocate of eugenical sterilization. It mailed hundreds of thousands of eugenics pamphlets to college teachers across the nation, sponsored a column on "social eugenics" in the *Los Angeles Times*, aired radio programs, and underwrote hundreds of lectures. The HBF also meticulously collected annual sterilization data and published an annual score card. It remained vigorous until

Gosney's death in 1942 (*Pasadena Star News*, 1942).

Despite the constitutional inadequacies of earlier statutes, in the mid-1920s involuntary sterilization became a major legislative issue. During the period from 1923 to 1925 sterilization laws were enacted in twelve states. Drafted with greater concern for constitutional issues than pre-war legislation these laws usually required the assent of parents or guardians and preserved the patient's right to a jury trial on the question of whether he or she was "the potential parent of socially inadequate offspring" (Laughlin, 1926: 65).

Opponents of sterilization quickly attacked the new laws. In June, 1925, the highest Michigan court upheld Michigan's sterilization statute and ruled that the program was "justified by the findings of Biological Science" (*Smith v. Probate*, 1925). The really crucial case involved the constitutionality of a Virginia law that was decided by the United States Supreme Court. In May, 1927, Oliver Wendell Holmes, writing for the majority, upheld the involuntary sterilization of the feeble-minded, concluding: "It is better for all the world, if instead of waiting to execute degenerative offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes" (*Buck v. Bell*, 1927: 205). The Supreme Court's decision greatly boosted the pace at which sterilization programs were enacted and implemented. During the next few years the number of states with sterilization laws jumped from 17 to 30, and the number of sterilizations performed on institutionalized persons rose substantially. The years 1927 to 1942 were a triumphant period for persons who believed that sterilization would help solve some pressing social problems.

#### YEARS OF TRIUMPH

What was the driving force behind the second wave of sterilization laws? As was the case before World War I, a small group of activists from influential quarters persuaded scientifically unsophisticated legislators that sterilization was necessary, humane, and just.

The lobbyists succeeded in part because of



favorable views expressed in the medical profession. During the period from 1926 to 1936 about 60 articles, the vast majority in favor of eugenical sterilization, appeared. A few physicians played crucial roles. For example, Dr. Robert Dickinson, a noted gynecologist, presented a pro-sterilization exhibit at the 1928 meeting of the American Medical Association (Editorial, 1928). A visitor to the 1929 meeting of the American Association for the Study of the Feeble-Minded reported that his colleagues were convinced that it was "absolutely impossible to cope with the problem of feeble-mindedness without judicious use of sterilization" (Editorial, 1929: 136). In 1930, that organization voted 227 to 16 in favor of sterilization of the "mentally defective" (Watkins, 1930). Throughout the 1930s, the American Association for the Study of the Feeble-Minded strongly favored eugenical sterilization. In the general medical community support for it was strong, but not uniform. Only 18 state medical societies officially backed sterilization programs (Whitten, 1935). Yet in some states the support of physicians was extremely strong. For example, one investigator halted his further efforts to survey the views of Indiana physicians on sterilization because he found agreement among more than 400 of them so homogeneous (Harshman, 1934).

The legislative victories were impressive; nevertheless, the crucial measure of whether eugenic notions triumphed is to count the actual number of sterilizations performed. I disagree with Kevles (1985) who has characterized the number of persons who were subjected to involuntary sterilization as relatively small. As he put it, "[f]rom 1907 to 1928 fewer than nine thousand people had been eugenically sterilized in the United States" (p. 106). Although Kevles has enriched our understanding of the prominence of eugenic ideas in American intellectual life, his failure to analyze carefully available statistics on sterilization led him to underestimate the impact of eugenic laws. For example, he noted that "by the mid-thirties some twenty thousand sterilizations had been legally performed in the United States" (p. 112) and that enforcement of the laws pursuant to which these operations were performed "was minuscule by 1950" (p. 169).

My analysis of surveys conducted by the Human Betterment Foundation permit *minimum* estimates of mass sterilization and compel some striking conclusions:

(1) Between 1907 and 1963 there were eugenical sterilization programs in 30 states. More than 60,000 persons were sterilized pursuant to state laws.

(2) Although sterilization reached its zenith during the 1930s, several states vigorously pursued this activity throughout the 1940s and 1950s.

(3) At any particular time, a few programs were much more active than the rest. In the 1920s and 1930s California and a few mid-western states were most active. After World War II, several southern states accounted for more than half of the involuntary sterilizations performed upon institutionalized persons.

(4) Beginning about 1930, there was a dramatic rise in the percentage of women who were sterilized.

(5) No revulsion against Nazi sterilization policy seems to have curtailed American sterilization programs. Indeed, more than one-half of all eugenic sterilizations occurred after the Nazi program was fully operational.

From 1929 to 1941 the Human Betterment Foundation conducted annual surveys of state institutions to chart the progress of sterilization. Letters from hospital officials indicate what factors influenced their programs. The most important determinants of the scope of a program's operation were the complexity of the due-process requirements of the relevant laws, the level of funding, and the attitudes of the superintendents themselves. A West Virginia official complained that his law had so many amendments as to "practically annul it" (Denham, 1933). An Arizona physician reported that there was no money to pay for surgery (Develin, 1933). On the other hand, in Alabama a physician superintendent reported that he had secured funds to sterilize *every* patient before discharge from the state hospital and had operated upon 184 persons in two years (Partlow, 1935).

The HBF surveys strongly suggested that the total number of sterilizations performed upon institutionalized persons was under-reported. Respondents frequently indicated that eugenic operations were conducted out-

side the confines of state hospitals. The Assistant Attorney General of Maine wrote that "many more operations have been performed (than are reported) but I suppose we shall have to go by the records" (Folsom, 1936: 1). An Indiana superintendent asserted that "hundreds of operations have been done in the community" (Dunham, 1936: 1).

Until 1918, only 1422 eugenical sterilizations were reported as performed pursuant to state law. Ironically, the sterilization rate began to rise during the very period when the courts were rejecting the first round of sterilization statutes (1917-1918). During 1918 to 1920 there were 1811 reported sterilizations, a four-fold increase over the rate in the prior decade. During the 1920s annual sterilization figures were stable (Fig. 1), but in 1929 there was a large increase in sterilizations. Throughout the 1930s more than 2000 institutionalized persons were sterilized each year, a rate triple that of the early 1920s.

This rapid increase reflected changing concerns and changing policy. In the Depression years superintendents of many hospitals, strapped by tight budgets, decided to sterilize mildly retarded young women. Before 1929 about 53 per cent of all eugenical sterilizations had been performed on men. Between 1929 and 1935 there were 14,651 reported operations, 9327 upon women and 5324 on men. In several states (e.g., Minnesota, Wisconsin)

virtually all the sterilized persons were women. This fact becomes even more impressive when one considers that the salpingectomy operation incurred a relatively high morbidity and a much higher cost than did vasectomy. In California, at least five women died after undergoing eugenical sterilization (Gosney and Popenoe, 1929).

During the 1930s institutionalized men were also being sterilized in unprecedented numbers. This was largely a consequence of the great increase in the total number of state programs. Unlike the "menace of the feeble-minded" that haunted policy before World War I, the new concern was to cope with harsh economic realities. As many superintendents saw it, fewer babies born to incompetent parents might mean fewer state wards in the future. Sterilizing and paroling mildly retarded women eased overcrowding and, it was argued, permitted them to live more successful lives than if they were burdened with children (State Board of Control of Minnesota, 1934).

The triumph of eugenic sterilization programs in the United States during the 1930s influenced other nations. Canada, Germany, Sweden, Norway, Finland, France, and Japan enacted sterilization laws. In England, sterilization was ultimately rejected, but in Germany the Nazis sterilized more than 50,000 "unfit" persons within one year after enacting a eugenics law.

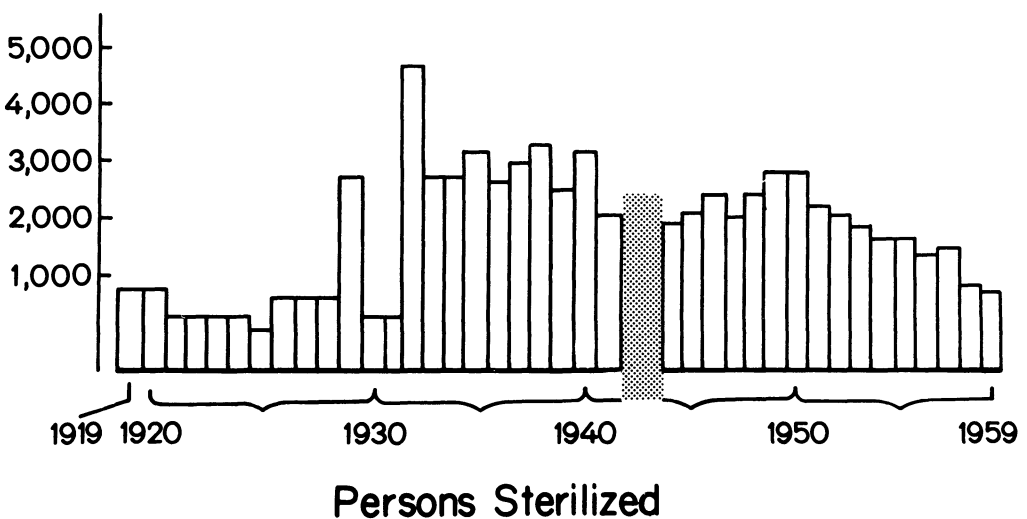


FIG. 1. STERILIZATIONS PERFORMED EACH YEAR UPON INSTITUTIONALIZED PERSONS, 1919-1959

Proposals favoring eugenical sterilization were common in England early in this century. In 1907 Galton's colleagues organized the Eugenics Education Society (EES), which soon included hundreds of prominent academicians. Although committed to eugenic ideals, the EES pursued a moderate course, stopping short of a policy that included involuntary sterilization (Searle, 1976). The major legislative action during this era was the Mental Deficiency Act of 1913, a law that clearly favored educational programs for the feeble-minded—a decidedly dysgenic policy.

During the late twenties the EES, troubled by the rising welfare budget, did lobby for voluntary eugenical sterilization. In 1931 the House of Commons rejected such a bill, but it created a Committee to study the question. Three years later it filed a report that roundly criticized programs like those in the United States as being inadequately supported by genetic evidence (Brock, 1934).

The German interest in eugenics had roots that were entwined with 19th Century European racial thought, a topic beyond the scope of this review. In the early years of this century a spate of books preached the need to protect the Nordic germ plasm. A German eugenics society was formed in 1905, and in 1907 the first sterilization bill was offered in the Reichstag (Lenz, 1934). It failed to pass. The devastation of World War I halted the German eugenic movement, but by 1921 groups were again actively lobbying for eugenics programs. Of particular importance was the publication by three prominent German scientists, Erwin Baur, Eugen Fischer, and Fritz Lenz, in 1923 of a textbook on human heredity and eugenics. The contribution of Baur, an eminent plant geneticist who did not usually stray from his area of expertise, is notable. According to Glass (1981), Baur was deeply troubled by the suffering of Germans during the occupation of the Rhineland and became concerned that it was essential for the more robust German citizens to reproduce vigorously in order to counter the influx of inferior types. According to Popenoe (1935), Lenz influenced Hitler's ideas on racial purity.

When the Nazis swept into power, they quickly implemented a program to encourage larger, healthier families. According to Kopp (1935), Gosney and Popenoe influenced Nazi

sterilization policy. The Nazis restructured tax laws to favor childbearing and enacted a law to curb reproduction by "defective" persons. This law created a system of "Hereditary Health Courts" that judged petitions brought by public health officials recommending that certain citizens burdened with any of a long list of disorders (feeble-mindedness, schizophrenia, manic depressive insanity, epilepsy, Huntington's chorea, hereditary blindness, hereditary deafness, severe physical deformity, or habitual drunkenness) be subjected to compulsory sterilization. In 1934, the courts heard 64,499 petitions and ordered 56,244 sterilizations, for a "eugenic conviction" rate of 87 per cent (Cook, 1935).

During the middle 1930s the Nazis cast an even larger net. In 1934 the German Supreme Court ruled that the law applied to non-Germans living in Germany, a decision that threatened gypsies. From 1935 through 1939 the annual number of eugenical sterilizations grew rapidly. Unfortunately, key records perished during the war. Yet in 1951 the "Central Association of Sterilized People in West Germany" charged that from 1934 to 1945 the Nazis sterilized 3,500,000 people, often on the flimsiest pretext (*New York Herald Tribune*, 1951). The Nazi program was eugenics run amok. In the United States no program even approached it in scope or daring.

#### CRITICS OF EUGENIC STERILIZATION

The difficulty of explaining why eugenic ideas appealed so strongly to some Americans extends to the task of understanding why interest faded when it did. Of course, there were always critics. At various times geneticists, social scientists, physicians, and (most effectively) the Catholic Church opposed sterilization programs. After World War II civil libertarians, lawyers, patients' families, and patients themselves repudiated the old notions.

During the heyday of eugenics the science of genetics was also making important strides. After training with Thomas Hunt Morgan in Columbia's fly room, talented graduate students brought *Drosophila* genetics to other universities. By the mid-1920s quite a number of academic geneticists were critical of the unsophisticated ways of the eugenicists. Yet few tried to counter the eugenicist's political activities (Haller, 1963; Ludmerer, 1972).

The first major scientist to take on the eugenicists was Herbert Spencer Jennings, a zoologist at The Johns Hopkins University. He severely criticized the statistical methods used by Laughlin to conduct his immigration studies and offered his arguments both in scientific periodicals (Jennings, 1924) and popular magazines (Jennings, 1923). He consistently argued that sterilizing the feeble-minded was a futile gesture, although he quite approved of the use of voluntary sterilization by enlightened couples at high risk for bearing defective children (Jennings, 1930).

A few leading geneticists criticized the various famous pedigree studies. Morgan, a man who shunned political battles, contented himself only with dismissing the studies of the "Jukes" and "Kallikaks" as inadequate investigations of the interaction between genetic and environmental influences (Morgan, 1925). Raymond Pearl was more vocal. He ridiculed the early pedigree work and urged eugenicists to throw away their "old-fashioned rubbish" (Pearl, 1927: 263). Another important critic was Hermann Joseph Muller, renowned for the discovery that radiation induces mutations. At the Third International Congress of Eugenics he shocked the audience by attacking its most dearly held tenets (Carlson, 1982).

During the 1930s developments in Europe greatly increased concern among geneticists that substantial harm might be done in the service of state-supported eugenic policy. No doubt influenced by the economic climate, the English National Council of Labour Women passed a resolution in favor of sterilizing defective persons. Soon after they swept to power in 1933, the Nazis dismissed hundreds of Jewish professors. Events like these provoked the great British geneticist, J. B. S. Haldane, to launch a scathing attack on eugenics.

Later published as *Heredity and Politics* (Haldane, 1938), his book masterfully separated genetic fact from political fantasy. For example, Haldane pointed out that the eugenic idea popular in 1910 (an era of full employment) that pauperism was genetically determined was untenable during a Depression in which 1,500,000 Englishmen were out of work. Not a little of Haldane's book deflates the perfectionist dreams of those who advocated sterilization. After demonstrating the weakness of its scientific foundations, he dismissed "compulsory sterilization" ". . . as a piece of crude

Americanism like the complete prohibition of alcoholic beverages" (Haldane, 1938: 86). His book did much to alert the growing genetics community to the need to refute the quasi-scientific eugenicists (Glass, pers. commun., 1985).

Catholic priests were among the earliest critics of eugenical sterilization. Their attack became intense after World War I, and was part of a larger concern over the efforts of eugenicists to restrict immigration. In the United States, the Catholic Church, a small minority in a Protestant nation, was a church of immigrants. By the mid-1920s eugenicists had recognized the Catholic Church as a major enemy. They attributed the gubernatorial veto of a Colorado sterilization bill to lobbying by the Denver Chapter of the Knights of Columbus (Johnson, 1927).

In 1930 Pope Pius XI issued *Casti Connubi*, the encyclical on Christian marriage, which included the first official condemnation of eugenical sterilization. Pius XI asserted that civil authorities had no right to deprive guiltless persons of a "natural faculty by medical action" (Pius XI, 1939: 96-97). *Casti Connubi* rallied Catholic organizations to oppose eugenic laws. This action in turn polarized some Protestant groups to argue in favor of eugenical sterilization.

During the 1940s Catholic opposition to both eugenic sterilization and elective sterilization to limit family size was widespread. Leading eugenicists saw Catholic opposition as their "greatest obstacle." According to Olden (1945), a founder of the New Jersey Sterilization League, Roman Catholic priests defeated proposed laws in Wisconsin, Maine, Alabama, and Pennsylvania. Olden reported that in Alabama, priests and nuns had "invaded" the legislature and that in Pennsylvania lobbying against sterilization had been masterminded by the Cardinal's office. Catholic opposition to sterilization played a major role in delaying widespread elective surgery to limit family size.

The first important clinical critique of eugenic sterilization was developed by Dr. Walter Fernald (1919), a Boston psychiatrist. After studying 646 non-sterilized feeble-minded persons who had been discharged from institutions, he found that few of them became parents. He concluded that the eugenicists had mistaken the relatively high fertility of persons

of low socioeconomic status for that of the mentally defective. Despite his refutation of a major tenet of eugenic thought, the study had no immediate impact on social policy.

Just as a few zealous eugenicists did so much to enhance their cause, a single physician played a crucial role in attacking the beliefs upon which eugenical sterilization was grounded. This was Dr. Abraham Myerson, a neurologist at Tufts University, who began to question eugenics in the mid-1920s (Myerson, 1928). In 1930, he published a study showing that the feeble-minded were born in roughly equal proportions in all segments of society, a finding that contrasted sharply with the eugenic thesis that a relatively few persons in the lower classes produced a disproportionate number (Myerson and Elkind, 1930).

In 1934 the American Neurological Association asked Myerson to chair an investigation of eugenic sterilization. The committee's conclusions rejected several major eugenic notions. It determined that the increasing number of institutionalized persons was the consequence of a better system of medical care, and was not due to a rising incidence in births of retarded persons. It also reported that the most common affliction suffered by newly institutionalized persons was cerebral atherosclerosis, a fact explained by the increasing longevity of the population. Overall, the committee found that "the race is not going to the dogs, as has been the favorite assertion for some time" (Myerson, 1936a: 6). It concluded that there was no pressing need for involuntary sterilization programs, but that voluntary sterilization might be a reasonable option for some individuals.

The report had an immediate political impact. The *New York Times* published a letter summarizing the report's findings (Myerson, 1936b). It provided important ammunition with which opponents torpedoed a sterilization bill then under consideration in Albany (Cooper, 1936). From the mid-1930s onward, sterilization bills fared less well than during the preceding decade. Nevertheless, already-entrenched programs continued to sterilize about 2500 institutionalized persons each year.

#### AFTER WORLD WAR II

During the 1920s behavioral psychologists (Watson, 1927) had advanced views of intelligence that were incompatible with the eugenic

thesis. Nevertheless, prior to World War II, social scientists were not much involved in efforts to halt sterilization programs. After the War, as psychologists replaced physicians in much of the mental health field, some of them challenged established sterilization policy. Also after World War II, in 1950, the families of retarded persons formed their own lobbying group, the National Association for Retarded Children (NARC). By 1960 it had achieved an important political presence, a success that was redoubled when President Kennedy took office. NARC and its allies rejected eugenic sterilization. In 1962 the President's Commission on Mental Retardation reaffirmed this view. By the early 1960s most state sterilization programs had stopped.

With the onset of World War II there had been a sharp decline in the number of eugenic sterilizations in the United States. Although manpower shortages were significant, other factors were also at work. In 1939 the Eugenics Record Office closed its doors, and in 1942 the Human Betterment Foundation ceased its activities. Later in that year the Supreme Court, considering its first sterilization case in 15 years, struck down an Oklahoma law that permitted certain thrice-convicted felons to be sterilized (*Skinner v. Oklahoma*, 1942). Although its specific impact is difficult to assess, the post-war civil rights movement also surely contributed to the failure of sterilization programs to return to earlier levels. Despite these changes, some sterilization programs continued, albeit at reduced activity levels.

Between 1942 and 1946 there were only half as many eugenic sterilizations annually as had been performed annually during the 1930s. Reports of institutional officials make it clear that this decline was almost completely owing to a lack of surgeons and nurses (Taromianz, 1944; Perry, 1945). The Supreme Court decision was not important in causing the decline. Avoiding an opportunity to overrule *Buck v. Bell* (1927), the Justices instead demanded that involuntary sterilization be practiced in accordance with the Equal Protection Clause. The Oklahoma law was struck down because it spared certain "white collar" criminals from a punitive measure aimed at other thrice-convicted persons, not simply because it involved sterilization.

In charting the sterilization trends during the 1940s and 1950s I have relied primarily on

the surveys conducted annually by the Sterilization League of New Jersey, a group founded in 1937 that underwent several changes of name. After some internal feuding in the early 1940s the organization, refueled financially by Clarence Gamble, a physician and a relative of the wealthy soap family, renamed itself Birthright, Inc. Besides being instrumental in maintaining sterilization statistics, Birthright, largely thanks to the zeal of Dr. Gamble, helped stimulate several states to initiate new programs. His greatest victory was in North Carolina, where he obtained government approval to conduct extensive mental testing on grade-school children and then used those data to identify persons who would "benefit" from sterilization. Within a few years North Carolina had one of the nation's largest eugenic sterilization programs (Woodside, 1950).

During the late 1940s there was no definite indication that sterilization programs were about to decline further. After hitting a low of 1183 in 1944, there were 1526 operations in 1950. Slight declines in many states were balanced by rapid increases in North Carolina and Georgia. By 1950, however, there were strong signs that sterilization was in disfavor even among institutional officials. For example, during the 1930s and 1940s 100 persons in San Quentin prison had been sterilized each year. In 1950 the prison surgeon told Birthright that new officials at the Department of Correction were "entirely adverse" to the program (Stanley, 1950: 1). Several institutional superintendents in other states informed Birthright that they no longer believed that heredity was a major factor in mental retardation (Missouri official, 1950). During that year sterilization bills were considered in only four states, and all of them were rejected (Butler, 1950).

There were major changes in state sterilization programs in 1952. The California program, for years the nation's most active, was moribund, dropping from 275 sterilizations in 1950 to only 39 in 1952. In that year Georgia, North Carolina, and Virginia (having together sterilized 673 persons) were responsible for 53 per cent of the national total. General declines in most other states continued throughout the 1950s and by 1958, when Georgia, North Carolina, and Virginia sterilized 574 persons, they accounted for 76 per cent of the reported operations. The data do not suggest that the

southern programs were racially motivated. Only as to South Carolina, where in 1956 all 23 eugenic sterilizations were performed upon "Negro females" (Hall, 1956), might such suspicion be entertained. The North Carolina program was unique in that it was directed largely at non-institutionalized, rural young women (Woodside, 1950). As recently as 1963 the state paid for the eugenic sterilization of 193 persons, of whom 183 were young women (Casebolt, 1963). Despite their persistence, the southern programs must be seen as a local eddy in a tide of decline.

#### INVOLUNTARY STERILIZATION TODAY

During the 1960s the practice of sterilizing retarded persons in state institutions virtually ceased. Still, the laws remained. In 1961 there were eugenic sterilization laws on the books of 28 states (Landman and McIntyre, 1961). Between 1961 and 1976 five laws were repealed, six were amended, and one state (West Virginia) adopted its first sterilization statute. Since 1976 there has been a trend to repeal the laws. Currently, eugenic sterilization of institutionalized retarded persons is permissible in 19 states, but the laws are rarely invoked. A few states have even enacted laws that expressly forbid sterilization of any persons in state institutions. On the other hand, several constitutional attacks upon involuntary sterilization have failed (*In re Cavitt*, 1968, *Cook v. State*, 1972; *In re Moore*, 1976).

If the mid-1930s saw the zenith of eugenic sterilization, the mid-1960s saw its nadir. The pendulum of policy continues to swing, however. The late 1960s saw the first lawsuits brought by parents of non-institutionalized retarded females on the basis that sterilization was both economically essential and psychologically beneficial to the family's efforts to maintain the adult daughters at home (*Frazier v. Levi*, 1968).

In 1973 the debate over the sterilization of institutionalized persons whom officials had decided were unfit to be parents flared in the media. The mother of a young man whom physicians at the Partlow State School in Alabama wished to sterilize challenged the constitutionality of the enabling statute. When Alabama officials argued that they did not need statutory authority so long as consent was ob-

tained from the retarded person, the federal judge not only overturned the law, but decreed strict guidelines to control the process of performing "voluntary" sterilizations at Partlow. The key feature was the creation of an outside committee to review all the sterilization petitions (*Wyatt v. Aderholt*, 1973).

Also in 1973 the Department of Health, Education and Welfare (HEW) became enmeshed in a highly publicized sterilization scandal. That summer it was reported that an Alabama physician working in a family planning clinic funded by HEW had sterilized several young, poor black women without their consent. The National Welfare Rights Organization and two of the women sued to block the use of all federal funds to pay for sterilizations. This prompted HEW to draft strict new regulations; but a federal judge struck them down, holding the HEW could not provide sterilization services to any legally incompetent persons (*Relf v. Weinberger*, 1974). Revamped several times, the HEW guidelines were subject to continuous litigation for five years. Late in 1978 "final rules" were issued that prohibited sterilization of some persons (those under 21 and all mentally incompetent persons) and created elaborate consent mechanisms for competent persons who requested sterilization, to be paid for by public funds (Federal Register, 1978).

During the last five years the debate over sterilizing the mentally retarded, although no longer cast in a eugenic context, has reheated. The key issue now is how to resolve the tensions between the society's duty to protect the incompetent person and the right of that person to be sterilized. The court must be convinced that the operation will benefit the patient. More than 20 appellate courts have recently been asked to consider sterilization petitions. This spate of litigation has resulted because physicians are extremely reluctant to run the risk of violating the civil rights of the retarded. The courts have split sharply. In the absence of express statutory authority, six high state courts have refused to authorize sterilization orders (In the Matter of *S.C.E.*, 1977). This abdication of power by the courts was in part stimulated by an unusual lawsuit in which a sterilized woman later sued the judge who approved the surgery. Ultimately, the principle of judicial immunity was upheld by the

United States Supreme Court (*Stump v. Sparkman*, 1978).

The majority of appellate courts have ruled that local courts of general jurisdiction do have the power to evaluate petitions to sterilize retarded persons. In a leading case, the highest court in New Jersey held that the parents of an adolescent girl with Down's Syndrome might obtain surgical sterilization for her if they could provide clear and convincing evidence that it was in "her best interests" (In re *Grady*, 1981). Since then, high courts in Colorado, Massachusetts, and Pennsylvania have ruled in a similar manner. These decisions promise that in the future the families of some retarded persons will in appropriate circumstances be able to obtain sterilizations for them, regardless of their institutional status.

The great era of sterilization, however, has passed, although grim reminders of unsophisticated programs that once flourished linger. In Virginia persons sterilized for eugenic reasons decades ago have sued the state, on grounds that it was a violation of their civil rights. Depositions taken before the trial indicated that many of the persons who were sterilized were not retarded (*Poe v. Lynchburg*, 1981). Although they lost their argument that the operations were performed pursuant to an unconstitutional law, the plaintiffs did win a settlement that requires Virginia to attempt to locate all persons who were sterilized by the state and inform them of the consequences of the operation. Well into the 1970s a few states (Iowa, North Carolina, Oregon) still operated sterilization programs. Between 1971 and 1977 the Iowa Board of Eugenics considered 215 sterilization petitions and authorized 179 of them (*Howard v. Des Moines Register*, 1979).

Is the saga of involuntary sterilization over? Our present knowledge of human genetics makes the return of mass eugenic sterilization very unlikely. However, it is more difficult to predict the future of sterilization programs founded on other arguments. During the 1960s a number of state legislatures considered bills to tie welfare payments to "voluntary" sterilization (Paul, 1968). In 1980 a Texas official made a similar suggestion (*New York Times*, 1980). Unscientific opinion polls conducted by magazines and newspapers in Texas (*The Texas Observer*, 1981) and Massachusetts (*The Boston*

*Globe*, 1982) have found significant support for involuntary sterilization of the retarded.

The pressing demands of population control in India and China have resulted in social policies that create strong incentives to be sterilized. Since launching the "one child" program in 1979, China has rapidly altered the social fabric of one billion people (Intercom, 1981). What may not happen here in the United

States may transpire in other countries, with different legal codes and different population pressures. As resources continue to shrink and the earthly neighborhood becomes more crowded, societal incentives in favor of sterilization may some day be as common as compulsory immunizations, but the eugenic vision is not likely to provide its intellectual rationale.

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