

PROFESSIONAL RESPONSE TO THE AMERICAN  
STERILIZATION MOVEMENT  
DURING THE 1930s

By

Michael Edward Holland

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Oklahoma State University

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Thesis Approved:

Alexander M. Osipov  
Thesis adviser

Ben W. Smith

Mary F. Jewell

Norman N. Durden  
Dean of the Graduate College

1011915

## PREFACE

The theory of natural selection as elaborated by Charles Darwin (1809-1881) had a monumental influence on the development of philosophy in the nineteenth and twentieth centuries. Darwin postulated that all species and races were derived from a primitive and common ancestor. Darwin believed that variations had arisen as a natural product of reproduction and the varieties which could survive best in their natural environment would continue to exist and change. The variations which lived made up the extant species, while those variations which were less successful in adapting to their environment became extinct. The idea that organisms in response to natural laws continued to change and become more specialized and advanced appealed to many English Victorians. So influential was Darwin's theory of biological progress by the mechanism of natural selection that a social philosophy was derived from the biological theory. One of the most important members of the social-Darwinist school of philosophy was the English naturalist Francis Galton (1822-1911). Galton reconciled the Darwinian version of the process of speciation with the ancient concept of selective breeding of human beings. The result of this synthesis was the idea that man could replace nature as the agent of selection in speciation. Man it was theorized could rapidly accelerate the selection process because he was guided by reason and purpose as opposed to nature which was directed only by random chance. This social philosophy termed by Galton



"eugenics" had its foundations in England, but its most dynamic application was made in the United States: sterilization. The idea of selective breeding of the human race was complementary to the American progressive ideology.

State sterilization programs were an important and significant part of the American eugenics movement in the twentieth century. The sterilization movement differed from most other programs of the eugenics movement in that it frequently called for compulsory measures. The movement in method and purpose adapted little to the changing times of the twentieth century. The sterilization controversy was an absorbing struggle between the idea that the state should have great powers, which was popular in the progressive era, and that of the rights of individuals, a concept which was very strong in the 1920s and 1930s. The sterilization movement essentially entered the decade of the 1930s unchanged from the previous three decades. However, a number of important events occurred in the 1930s which affected the status of compulsory sterilization as it was perceived by the movement's closest observers, the professions which were directly related to the implementation of such a policy. The depression of 1929 served to challenge the naturalist tenet that biological worth was determinable by observing social and economic status. With over seven million American workers out of work during the depression, the idea that money and position dictate worth was unacceptable to many. Dedicated advocates of human sterilization were reaffirmed in their belief that human value was indicated by economic level, by the massive unemployment which resulted from the depression of 1929. Americans were also challenged in their positive attitudes toward strong government by the rise of a

totalitarian state in Germany after 1933. The sterilization program was directly affected by the rise of fascism in Germany because one of the principal doctrines of the new German government was a program of sterilization of those whom it considered to be unfit. As the 1930s progressed and the abuse of the Nazi sterilization laws increased in intensity, many professionals repudiated the movement. The eugenics and sterilization movements never had great public support, but were dominated and supported by members of various professions or expert eugenicists. The support of the experts, either of reformers with no particular vocational skill but dedicated to improving the human species by sterilization or of those who were members of various professions, was critical to the success of the American sterilization movement. The 1930s have been passed over by historians as a time when American professionals repudiated the eugenics and sterilization movements; however, the reaction of educated Americans was much more subtle and complex than is usually asserted.

The eugenics and sterilization movements were dominated by experts, and to a certain degree so were opposing movements. It is therefore logical to look at the responses of the professions to American sterilization programs.

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## CHAPTER I

### INTRODUCTION

In the late 1920s and early 1930s several events occurred which helped to bring about a revival in the human sterilization movement in the United States. First, in 1927 the Supreme Court case of Buck v. Bell was resolved, and for the first time the highest federal court in the United States gave its sanction to a sterilization statute.<sup>1</sup> This affirmation of the principle of sterilization legislation was seen by many advocates as the beginning of a new age of racial betterment in the United States. Within the four years which followed the Supreme Court's decision of Buck v. Bell five states, Mississippi, West Virginia, Arizona, Vermont, and Oklahoma, enacted their first human sterilization statutes. In those same years ten states modified their laws to correspond to the model law of Virginia, and the laws which had seldom been enforced during the 1920s began to be enforced relatively stringently.<sup>2</sup>

Another stimulus occurred during the late 1920s and early 1930s when a number of foreign nations and provinces enacted sterilization laws. Until the late 1920s the United States had stood alone as the pioneer in eugenics and sterilization legislation. The Canadian provinces of Alberta and British Columbia passed compulsory sterilization laws respectively in 1928 and 1933; Denmark passed a similar law in 1928, and the other Scandinavian countries followed Denmark's example within a few years.<sup>3</sup> The advocates of eugenics in the United States

looked with enthusiasm upon the massive sterilization law enacted by the Third Reich on January 1, 1934.

A third development was the founding of the Human Betterment Foundation by Ezra S. Gosney, a businessman and philanthropist, in 1928. Gosney endowed the Foundation to study the approximately 6,000 sterilization operations which had been performed in California under the 1913, 1916, and 1917 statutes. The foundation employed one of the country's most active and important eugenics popularizers, Paul Popenoe. Popenoe produced about twenty papers on the California sterilization program, with the Foundation's help, between the years 1927 and 1930.<sup>4</sup> The papers reported that sterilization had been of benefit not only to the state of California but also to the individuals sterilized under the state laws.

These three events brought about a renewed zeal within the ranks of the American sterilization movement. This new determination resulted in a decade of intense struggle by the movement for the support of the professions and the public.

Eugenics, as a movement, always depended upon experts and professionals; the movement was never a popular public cause.<sup>5</sup> The 1920s had been a critical time for eugenics and especially the sterilization movement, for it was during this period that some scientific support was lost to the movement. New discoveries in genetics and the increasing racist tone of the eugenics propaganda caused many scientists to renounce and desert the eugenics movement.<sup>6</sup> Because of the desertion of scientists, the late 1920s and 1930s was a period of little professional support for eugenics. In addition to the professional attrition which affected the eugenics movement in general, the sterilization

movement had never elicited the whole-hearted support from the eugenics movement that other race improvement programs did. Because of the loss of professional support for both the eugenics movement and the human sterilization movement, and a lack of public support, the sterilization movement in the 1930s increasingly became a movement of dedicated professionals.

Support from specialists and technical experts has always been essential for the success of any program which rests upon a scientific foundation. Therefore it is essential to any understanding of the last active decade of the American sterilization movement to appreciate professional attitudes toward that movement. Knowledge about disposition of America's professional communities concerning the sterilization movement will expand the explanation of the decay of a movement which entered the decade of the 1930s in an unsurpassed state of confidence and zeal. The occupations or professions which are dealt with in this study were those which were critical to the successful functioning and execution of sterilization laws in the United States. The eugenists' position is of course important to any understanding of the reaction of the professions, for it is the purpose of the eugenicist to translate and edit scientific data into templates to be applied to society. It was the programs and ideas of the eugenists to which the professions were reacting. The reaction of the legal and juridical profession was critical to the success of the American sterilization program because it was the lawyer and the judge who were responsible for testing and evaluating the laws respectively. It was also up to the lawyer, after the law had been declared constitutional, to apply the law to the various types of the "unfit" in society. The members of the medical community were of



obvious importance to the movement because it was they who selected and evaluated who was to be subjected to the sterilization statutes. It was also the physician who was responsible for carrying out the boards' decisions to sterilize the individual. Information of public and professional attitudes toward sterilization, the opinions expressed by scientists were of critical importance. To a large degree it was the arguments of the scientists which counteracted the contentions and propaganda of the eugenists in the struggle for the sterilization of the nation's unfit population. The penologists and corrections experts were also a significant force in the battle for human sterilization.

To a large extent the sterilization movement in the United States grew out of criminal anthropology.<sup>7</sup> The prison and charities directors were in daily contact with the elements of society which were considered for sterilization, and thus their convictions were strong in regard to sterilization. These administrators were usually in closer contact with state legislatures than were scientists, and thus their influence was important in the progress of the sterilization movement in the United States. In addition to the professions which were directly related to the implementation or formation of the sterilization laws, it is worthwhile to observe the position of the clergy on the issue of sterilization. The Catholic clergy provided the main source of united opposition to the practice of sterilization, and their arguments were instructive on matters other than theology and morality. The Protestant churches were not united either for or against sterilization and were therefore of far less importance to the movement than the Catholic Church.

In order to gain an understanding of the main trends of the American sterilization movement, I have examined in this study statutes

directed at three types of defectives. State laws enacted during the twentieth century which were directed at the "feeble minded", or the mentally retarded, numbered more than ninety separate statutes. Similar statutes for sterilization of the "insane", or mentally diseased, numbered about sixty in the same period. Criminals were placed under threat of legal sterilization by about forty separate state statutes. Laws directed at these three types of socially undesirables made up the majority of all sterilization statutes enacted in the United States. Therefore, the laws dealing with sterilization of the "feeble minded", "insane", and "criminal" represent a valuable overall coverage of the American sterilization movement.

The sterilization movement was philosophically based on the ideology of eugenics which was the direction of human evolution through planned selective breeding. Eugenics, as a philosophy, was a European innovation. The word "eugenics" and the accompanying ideology were products of the English naturalist Francis Galton. Galton suggested not only that the most able and valuable members of society be encouraged to reproduce at an increased rate, but that inferior individuals be restricted from reproducing and thus polluting the breeding stock of civilization.<sup>8</sup> Galton, however, made no suggestion of what method should be employed to restrict the reproduction of less desirable members of society. In 1897 a significant development for the sterilization movement occurred, the development of the procedures of vasectomy for the male and salpingectomy for the female.<sup>9</sup> The new procedures were preferable to the older method of sterilization, castration. Castration asexualized the subject and altered the endocrine balance of the body, thereby modifying behavior. Vasectomy and salpingectomy neither

asexualized the subject nor disturbed the hormonal balance of the body; they simply rendered the subject incapable of procreation.

Galton's idea to keep the germ plasm of the race pure was first put into action by an American prison physician in Indiana, Dr. Harry Sharp. In 1899 Sharp performed a vasectomy on a patient who had requested a castration to help him stop masturbating. Although this use of the vasectomy to alter hormone induced behavior was medically unsound, the subject of the operation was reported to be happy with its results. Sharp, encouraged by the results of his therapeutic operations, happened upon the idea of using vasectomy to eliminate bad germ plasm from society. Sharp led a state campaign in Indiana to get the legislature to pass a statute for sterilization of various mental defectives, convicts and rapists.<sup>10</sup>

The passage of a sterilization law in Indiana encouraged several other Northern and Western states to pass similar statutes. These laws passed during the peak of progressivism frequently ignored the civil rights of the patient considered for the operation, and the motives of the law were mixed. Several of these laws confused punitive and therapeutic motivations with eugenic reasons.<sup>11</sup> In the majority of these laws a state eugenics board was responsible for the appointment of a committee composed of a physician, a psychiatrist and several superintendents of state institutions for the criminal and dependent. The committee was responsible for deciding on whether to deprive a nominated patient of his powers of procreation. The patient was usually nominated either by the institutional physician or the administrator. Because of this administrative procedure most of the laws limited their scope to inmates in state and county institutions. Throughout the

evolution of the sterilization law in the United States, this process of selection and judgement was little altered. A couple of exceptional laws did provide for a much cruder method for judging the patient for sterilization. In the state laws of Washington and Nevada, the presiding judge of a felony case at the time of sentencing could prescribe the punishment of sterilization for the defendant.<sup>12</sup> However, the Nevada statute was declared unconstitutional in 1918,<sup>13</sup> and the Washington statute was voluntarily modified in 1921.<sup>14</sup>

Following the First World War several states not already having sterilization statutes, passed such laws. Also the majority of the states with such laws modified them and made them moderate in language and motivation. These states moderated their legislation, because they had observed the attitude of various high courts toward sterilization statutes.<sup>15</sup> The post-war laws were generally better constructed and less controversial, because portions which could be interpreted as either violations of due process of law or class legislation were eliminated.<sup>16</sup> Objections to the laws on grounds that they constituted cruel and unusual punishment were muted by the fact that the punitive motivations of the laws were disguised by hereditarian arguments.

It was the eugenic philosophy which brought about the implementation of sterilization statutes in over half of the United States. The study of the progress of these laws and reactions to them is an instructive method for understanding American attitudes to human and governmental rights during the twentieth century. The struggle over the power to control the biological destiny of man is most dramatically reflected in the decade of the 1930s, a decade of crisis, change, and transition.

FOOTNOTES

- <sup>1</sup>47 Supreme Court Report, 584, 274 U. S. 200.
- <sup>2</sup>Mark Hughlin Haller, Eugenics: Hereditarian Attitudes in American Thought (New Brunswick, N.J.: Rutgers University Press, 1963), p. 140.
- <sup>3</sup>Abraham Myerson et al., Eugenical Sterilization: A Reorientation the Problem (New York: Macmillan Co., 1936), pp. 21-23.
- <sup>4</sup>These papers were collected and bound in book form by the Human Betterment Foundation of Pasadena, California, in 1930. Of the twenty-six papers in the collection twenty-one were authored by Paul Popenoe. See E. S. Gosney ed., Collected Papers on Eugenic Sterilization in California (Pasadena, Calif: The Human Betterment Foundation, 1930).
- <sup>5</sup>Haller, Eugenics, p. 177.
- <sup>6</sup>Kenneth M. Ludmerer, "American Geneticists and the Eugenics Movement: 1905-1935," Journal of History of Biology II (Fall, 1969), p. 338.
- <sup>7</sup>Criminal anthropology was a field of criminology developed by Cesare Lombroso in the last quarter of the nineteenth century. The basic assumption of criminal anthropology is that criminal activities are hereditary as are general physical characteristics, and the "criminal type" can be detected by looking for a combination of specific physical characteristics. For a good treatment of the life and work of Lombroso see Hermann Mannheim ed., Pioneers in Criminology (Chicago: Quadrangle Books, Inc., 1960), pp. 168-227.
- <sup>8</sup>Francis Galton, Inquiries into Human Faculty and its Development (London: J. M. Dent & Sons, 1907), p. 17.
- <sup>9</sup>Paul Popenoe, "The Progress of Eugenic Sterilization," Journal of Heredity, XXV (January, 1934), p. 19.
- <sup>10</sup>Haller, Eugenics, p. 50.
- <sup>11</sup>Donald K. Pickens, "The Sterilization Movement: The Search for Purity in Mind and State," Phylon XXVIII (1967), p. 84.
- <sup>12</sup>See Revised Laws of Nevada, 1912, Vol. II. "Crime and Punishments," Par. 6293, Section 28 and Session Laws of Washington, 1909, Criminal Code, Section 35.

<sup>13</sup>(1918) 262 Fed. 688.

<sup>14</sup>J. H. Landman, Human Sterilization: The History of the Sexual Sterilization Movement (New York: Macmillan Co., 1932), p. 56.

<sup>15</sup>Harvard Law Review, XXVI (December, 1912), pp. 163-165.

<sup>16</sup>Haller, Eugenics, pp. 136-137.

## CHAPTER II

### THE FEEBLE MINDED

#### The Discovery of Feeble Mindedness in America

Most eugenicists from the late nineteenth century throughout much of the twentieth century considered the primary enemies of society and progress to be the mentally retarded, the feeble minded. Early students of the social sciences combined the various forms of mental retardation in one classification--feeble minded. These students considered the feeble minded to be responsible for many of society's social and economic ills such as crime, unemployment, immorality and overtaxation.

The term "feeble minded" had no universally accepted definition throughout the period of its greatest use. Feeble mindedness in the late nineteenth century was an appellation given to persons not conforming to the middle-class values of the Victorian era. During this period persons not conforming to norms of intelligence, productivity, and self reliance were considered feeble minded. Feeble mindedness often was attributed to individuals considered undesirable by the educated aristocratic elements of nineteenth-century United States and Britain. During the early twentieth century several psychologists employing the Binet intelligence test attempted to define and quantify the disorder.<sup>1</sup> In 1912 Harry H. Goddard an American psychiatrist and the administrator of a New Jersey school for feeble-minded children

published a genealogical study of a feeble-minded family, the Kalikaks.<sup>2</sup> This study emulated in method the earlier study conducted in 1874 by Richard L. Dugdale entitled The Jukes. Dugdale's study attempted to demonstrate the hereditary nature of such degenerate characteristics as prostitution, crime, and chronic unemployment.<sup>3</sup> Goddard's study similarly attempted to demonstrate the genetic nature of several degenerate characteristics, but none more strongly than feeble mindedness.<sup>4</sup> Goddard in subsequent studies differentiated between the gradations of feeble mindedness by use of Binet tests. He produced the classification moron and related it to intelligence quotients, derived from the Binet test.

Mental retardation or feeble mindedness in the early twentieth century frequently was considered to be another type of insanity. G. Archdall Reid, the author of an authoritative early twentieth century work on genetics, The Laws of Heredity, considered feeble mindedness simply a disorder of the memory. The retarded individual, he wrote, "may have all the human instincts, imitativeness, curiosity, sexual inclination, and the rest; but he is more or less incapable of storing experience . . . ."<sup>5</sup> During the same period the heredity of mental retardation was seen as a form of simple Mendelian heredity. The oversimplification of the mechanism of inheritance by early geneticists and other scientific workers was demonstrated by the opinion of the distinguished American biologist, Charles B. Davenport. Davenport expressed faith in

laws of inheritance of general mental ability that can be sharply expressed. Low mentality is due to the absence of some factor, and if this factor that determines normal development is lacking in both parents it will be lacking in all of their offspring.<sup>6</sup>



The confidence which the early geneticists had in regard to knowledge of the genetic mechanism of mental retardation encouraged some individuals to turn to science to rid society of its inferior elements. The feeble minded were the primary targets of eugenicists, legislators, and others who wished to purify the breeding stock of the human race.

### Sterilization Legislation

The eugenicists triumphed in their attempts to obtain compulsory sterilization legislation for the feeble minded during the peak of the progressive era. Several states enacted provisions for the sterilization of individuals suffering from some form of mental retardation, even before the publication of Goddard's very influential work on the Kalikak family. Four states had laws for the sterilization of individuals judged to be "feeble minded": California (1909), Connecticut (1909), Iowa (1911), and New Jersey (1911).<sup>7</sup> The states of Indiana (1907), Connecticut (1909), and Iowa (1911) had provisions in their state sterilization statutes for the sterilization of those classified as "imbeciles".<sup>8</sup> Laws for the sterilization of "idiots" were passed by the legislatures of Indiana (1907), Connecticut (1909), Iowa (1911), New Jersey (1911).<sup>9</sup> In addition, New Jersey in 1911 enacted a provision for the sterilization of people classified under Goddard's new category, moron.<sup>10</sup> These laws based their classification of mental retardation on the classification system established by Alfred Binet, French pioneer in psychological tests, and his student, Thomas Simon. From 1905 to 1911 Binet developed a set of five tests which defined idiots, imbeciles, and the feeble minded according to scores earned on

on the Binet intelligence test.<sup>11</sup> The states which enacted sterilization laws for the mentally retarded using the various classifications did so in a storm of controversy and amid frequent professional objections.

Between the publication of Goddard's study of the Kalikak family in 1912 and the entry of the United States into the First World War in 1917, seven additional states passed laws for the sterilization of idiots:

New York (1912), California (1913), Iowa (1913 and 1917), North Dakota (1913), Kansas (1913 and 1917), Michigan (1913), and South Dakota (1917).<sup>12</sup> During the same period five states for the first time en-

acted laws providing for the sterilization of imbeciles: New York (1912), North Dakota (1913), Kansas (1913), Michigan (1913), and South Dakota (1917).<sup>13</sup> In addition, during the same time period eight states

passed their first laws for the sterilization of the feeble minded: New York (1912), Michigan (1913), Wisconsin (1913), Nebraska (1915),

Oregon (1917), South Dakota (1917), New Hampshire (1917), and Kansas (1917).<sup>14</sup> The state legislatures increased their resolve to purify the

human race in the 1920s. In the period following the end of the First World War and 1930, eight states enacted their first laws for the sterilization of idiots, seven enacted their first laws for the sterilization of imbeciles, and fourteen states enacted laws for the

sterilization of the feeble minded. By the beginning of the 1930s the various states had passed ninety-nine laws for the sterilization of the mentally retarded of diverse types, and in 1931 sixty-six of these laws were still in effect. Of the sixty-six laws in effect at the beginning of the 1930s, thirty-two were for the feeble minded, eighteen for idiots, and sixteen for imbeciles. The number of laws for the sterilization of the mentally retarded was about twice that of laws for the

sterilization of people classified as insane or mentally diseased.<sup>15</sup> The high proportion of laws concerning the mentally retarded, specifically the "feeble minded," over other sterilization laws was demonstrative of the fear and alarm with which legislators regarded the population increase among the mentally retarded.

American sterilization laws enacted in the early twentieth century were fairly uniform in structure and wording. With a few exceptions, the sterilization laws for the mentally retarded applied to persons committed to state or county institutions. Only a few state statutes made any distinction between inmates about to leave the institution and those to be confined there for long periods of time or even for life.<sup>16</sup> The usual procedure was for the institution's physician or director to petition the state eugenics board to consider a designated inmate for sterilization. The state sterilization board was charged with evaluating the facts of the case and deciding on the matter of sterilization. The patient in some cases was not even allowed to appear before the board. There was, however, always a means of appeal for the patient designated to be sterilized, and in a limited number of instances legal council was even provided for poor and destitute patients.<sup>17</sup>

Most state sterilization laws concerning the mentally retarded were passed either during the peak of the progressive era or during the 1920s, when fear of increasing proportions of feeble minded launched stopgap sterilization programs. These laws, enacted out of fear of mental retardation and with supreme confidence in the power of the state and in science, were drafted with little regard for possible violations of civil rights or constitutionality. As a result, several

of these laws were tested in various state and federal courts. Between the years 1913 and 1921 seven state statutes which included provisions for the sterilization of the mentally retarded were declared unconstitutional by various reviewing courts.<sup>18</sup> In 1927 the Virginia sterilization statute was tested before the United States Supreme Court. This was the first state sterilization law to be tested before the Supreme Court, and results of the test were looked forward to with great anticipation by many state legislatures. Eugenists and lawmakers eagerly awaited the test of this law to find out for the first time the federal court's view of sterilization.

The case of a "feeble-minded" girl named Carrie Buck was used to test the Virginia sterilization statute. It was alleged that Carrie Buck should be sterilized for the good of the community because it was likely that she would give birth to mental defectives like herself. Carrie Buck was the daughter of a severely retarded mother and had herself given birth to an allegedly retarded child. The case was appealed on the grounds that Carrie Buck was denied equal protection under the law by the Virginia statute.<sup>19</sup> The decision in favor of the state of Virginia represented by J. H. Bell, superintendent of the Virginia State Colony for Epileptics and the Feeble Minded, in the case of Buck v. Bell heralded the beginning of a period of strict enforcement of sterilization statutes for the feeble minded already in existence and the passage of a number of new laws using the Virginia law as a model.<sup>20</sup> Many states which had sterilization statutes modified or enacted new ones which were more in line with the Virginia model. The entire sterilization movement was vitalized by the upholding of the principle of compulsory eugenic sterilization by the Supreme Court of the United

States. The affirmation of the principle of sterilization, specifically directed toward the feeble minded, was instrumental in the initiation of renewed zeal and enthusiasm within state legislatures and publically funded institutions.

#### The Eugenists: Defenders of Sterilization

Those members of the American eugenics movement who were advocates of sterilization directed most of their efforts toward curbing the disproportionate growth of the mentally retarded in the population. The studies of several early eugenists concluded that the feeble-minded portion of the population increased so rapidly because of their greater than average birth rate. In the early twentieth century, eugenists generally accepted as fact the findings that the birth rate among the feeble minded was twice that of the normal population.<sup>21</sup> The fear of the feeble minded became even greater among eugenists when it was observed that the birth rate of normal members of the population was on the decline. Samuel J. Holmes, of the Department of Zoology at the University of California, stated that, "On the whole the evidence points to the existence of a negative correlation between intelligence and fertility for all grades of intelligence from the highest down to but not necessarily including the lowest type of mental defectives."<sup>22</sup> Eugenists quite naturally took this to mean that in a society in which the most mentally able bred least and the least able bred the most civilization would soon be in the hands of what the well-known social critic, H. L. Mencken described as, "an ever increasing herd of morons for all eternity."<sup>23</sup> With increased precision of measurement with the Binet intelligence test the number of mentally retarded people detected

in the population was staggering. Eugenists' estimates of the number of feeble-minded individuals in the United States varied from about two per cent to fifteen per cent of the population in 1930.<sup>24</sup>

The fear of an overwhelming horde of feeble-minded individuals persisted among sterilization advocates from the 1900s to the 1930s. Because of this growing fear, eugenists embarked on an active campaign to force legislatures to pass and apply compulsory sterilization laws.<sup>25</sup> Despite certain disagreements between the theory of Mendelian mechanisms and findings acquired in studies of the feeble-minded families, eugenists continued to insist that enough was known to allow civilization to save itself from the dull-witted masses. Leon F. Whitney, full-time field secretary of the American Eugenics Society, was speaking from more enthusiasm than scientific knowledge when he stated that, enough was known about the transmission of mental retardation. Whitney suggested in 1934 that the work of the scientists in human genetics was for the most part finished and that it was now time for the popularizer to take the case for sterilization to the public.<sup>26</sup> Most eugenists were more modest about the scientific achievements of genetics and advised that research was a vital part of any worthwhile human sterilization program. Paul Popenoe and Roswell Johnson, two preeminent American eugenists and the authors of the popular eugenics textbook Applied Eugenics, minimized the lack of scientific knowledge about human inheritance of mental retardation, but they, like most eugenists, admitted the need for caution in applying sterilization.<sup>27</sup>

The most often used argument for convincing the public of the need for compulsory sterilization of the mentally retarded was the economic argument. With the large number of mentally defective people in

institutions, the cost of maintaining these people promised to be all but unbearable. Popenoe and Johnson estimated that it cost approximately \$500 to maintain a patient in a state institution for one year. E. S. Gosney, the founder of the Human Betterment Society, estimated that there were 6,000,000 feeble-minded individuals in the United States. Using the figures suggested by Popenoe and Gosney, the annual cost to American society for the maintenance of the mentally retarded was approximately \$3,000,000,000.<sup>28</sup> This cost was even more substantial when compared to the total cost of the New Deal up to the middle of 1935, which was estimated to be \$11,750,000,000.<sup>29</sup> The cost of mental retardation to society based on the estimated cost of institutionalization alone, however, was not complete. In the minds of many students of sociology and eugenics, mental retardation was linked to crime, welfare, and idleness.<sup>30</sup> The additional costs in supporting these "worthless" people with charities and governmental money was astronomical and unacceptable to most eugenisists, particularly those of an aristocratic or social-Darwinist orientation. In addition to justifying compulsory sterilization with arguments of an economic or cultural nature, eugenisists routinely argued that sterilization alleviated human suffering and pain.<sup>31</sup> Eugenisists accepted one common tenet, that the eugenisist should have the primary responsibility among those individuals who determined which persons were to be sterilized. The experts, who often manifested aristocratic attitudes, also shared another characteristic, no matter what decade in which they were active, they advocated the abandonment of the laissez-faire philosophy and the adoption of state power as a method to put right what man had disturbed. Sterilization advocates and eugenisists throughout the twentieth century were dedicated to

redressing the imbalances in nature caused by man's intervention. In the case of mental retardation man's humanitarian considerations had interfered with the social Darwinist tenet, survival of the fittest; and the unfit as a result threatened to absorb the fit.

### Scientific Objections

The American eugenics movement had substantial support among the scientific community in the progressive era; however, not long after the rediscovery of Gregor Mendel's work on unit inheritance, scientific support began to wane. The scientific oversimplifications made by early geneticists, and in particular by eugenicists, were abandoned as scientifically viable assumptions. The repudiation by scientists was made even more violent by the involvement of eugenicists in the sterilization movement. The move to sterilize the mentally retarded, more popularly known at the time as the feeble minded, was a very important issue in the disaffection of the geneticists from the eugenicists. By the 1930s there was still a split over the issue of sterilization, but it was less severe than it had been a decade or two earlier. Geneticists reflected on the legitimacy of a movement which claimed that the hereditary nature of the disorder of mental retardation was so well understood that massive programs of sterilization were in order. The assertions by Leon F. Whitney that research was not needed in the campaign to sterilize the mentally retarded, only popular education, alienated many practitioners of science from the sterilization movement.<sup>32</sup> Some members of the scientific profession such as Samuel J. Holmes believed that mental retardation was inherited as a simple recessive Mendelian trait.<sup>33</sup> Despite the opposing evidence of the



the results of more recent studies, eugenists such as Holmes retained their faith in the traditional explanation of the transmission of feeble mindedness. Holmes, however, was a member of a very small group of scientists who advocated a large scale sterilization program for the feeble minded. The attitudes of a large portion of the scientists of the 1930s were well demonstrated at the 1932 meeting of the American Association for the Advancement of Science, held at Syracuse, New York. During the meeting pamphlets issued by the Human Betterment Foundation were distributed to the members. This pamphlet called for the immediate consideration of a massive sterilization program for the 18,000,000 potentially unfit, including the mentally retarded.<sup>34</sup> The Human Betterment Foundation was immediately condemned for its unscientific proposal by a majority vote of the Association membership. Paul O. Kamora, the associate secretary for the National Committee for Mental Hygiene, considered this proposal to be the product of utopian ideology which was completely out of touch with the democratic environment for which it was proposed.<sup>35</sup>

Sterilization advocates who insisted that the sterilization of the feeble minded was based totally on proven scientific principles caused a number of scientists to openly denounce eugenics as a pseudo science.<sup>36</sup> The geneticists of the 1930s dedicated themselves to denouncing the antiquated statistics on feeble mindedness which eugenists constantly used. The eugenists continued to cite the "degenerate" families, the Kalikaks and Jukes, to defend their scientific theory of recessive Mendelian traits as the cause of mental retardation. For example, J. H. Jennings, an American geneticist from Johns Hopkins University,<sup>37</sup> estimated that the application of large scale

sterilization measures to the feeble minded could result in only an eleven per cent reduction in the births of feeble-minded children. Therefore, a decrease of mental retardation by an additional ten per cent would require sixty-eight generations, or about 1,500 years.<sup>38</sup>

The economic arguments for the sterilization of the mentally retarded, became less influential with scientists during the 1930s. Professor J. B. S. Haldane, a distinguished British geneticist, discounted the economic expedient of sterilizing and then releasing the feeble minded. Haldane found sterilization of the mentally deficient to be less desirable than segregation of the retarded, because segregation fulfilled the needs of the unfortunate afflicted as well as fulfilling society's duty to provide and aid the weak and ill members of the human race.<sup>39</sup> Lancelot Hogben, an important British biologist and embryologist,<sup>40</sup> stated:

Eugenists are never tired of talking about the 'waste' of expenditure on those who are 'by nature' unable to benefit from it. Naturally this does not engage the sympathy of educationists who take their job seriously. Nor does it enlist the support of intelligent citizens, who realize that no society is safe in the hands of a few clever people. If knowledge is the keystone of intelligent citizenship, the fact that many people do not benefit from existing provisions for instruction is less a criticism of themselves than a criticism of educational machinery. The possibility that heredity plays a large part in such differences is only relevant to public expenditure, when we have already decided whether we want more or less education. We do not need biologists to tell us that any subject can be made dull enough to defy the efforts of any but a few exceptionally bright or odd individuals. By exploring individual differences human genetics might help us to find out how to adapt our education techniques to individual needs. It will do so, and gain prestige in consequence, when it ceases to be an apology for snobbery, selfishness, and class arrogance.<sup>41</sup>

A few scientists took a position somewhere between the rejection of sterilization of the feeble minded as supported by Haldane and the

almost unconditional acceptance of the procedure by eugenis-  
tologists such as Holmes. This small group of scientists recognized the inadequacy of  
human understanding about the hereditary transmission of feeble minded-  
ness as well as other human disorders but considered man's knowledge  
adequate to justify the selective sterilization of some high-risk  
individuals. H. M. Parshley, a biologist who taught at Harvard Uni-  
versity and Smith College, was one of the scientists who supported  
selective sterilization programs. Parshley commented in defense of the  
eugenists, "When eugenists point out that biological science, at its  
present stage, is fully justified in recommending practical eugenic  
measures against such family strains [Kalikak and Juke families], they  
are on very solid ground."<sup>42</sup> Parshley concluded that despite man's  
incomplete knowledge of the mechanisms of transmission that, "sterili-  
zation, persistently and universally carried out, would undeniably have  
a cumulative effect of the greatest social value."<sup>43</sup>

Biologists and geneticists were not the only scientists to oppose  
mass sterilization of the mentally retarded. Psychologists and sociol-  
ogists, for the most part, were also not enthusiastic about the human  
sterilization movement. R. B. Cattell, an English social scientist,  
questioned the accuracy of intelligence tests used to determine whether  
an individual was feeble minded or not. Mental deficiency or retarda-  
tion in the opinion of Cattell was not a concept of "scientific psychol-  
ogy" but a sociological or administrative classification. Retardation  
as a concept was inadequate because it did not take into account the  
complex factors which make up intelligence. Science could not be  
expected to evaluate a concept so individual and complex as the con-  
glomerative features which make an individual desirable.<sup>44</sup> J. H.

Landman, a legal authority on the American sterilization movement, commented that many psychologists were in agreement that sterilization had no mental therapeutic value. Social scientists determined that the improvement in patient behavior which occurred after sterilization operations as reported by some eugenicists to be the result of institutionalization not surgery.<sup>45</sup>

The rejection of compulsory sterilization of the feeble minded by American scientists also was due partially to the unacceptable economic determinism demonstrated by many eugenicists. However, even more than economic determinism, the lack of knowledge about the exact nature of hereditary mechanisms caused the geneticists to withdraw their support from compulsory sterilization laws.

#### Medical Reaction

The medical community, like the scientific community, was divided over the issue of sterilizing the mentally retarded. The members of the medical community held an unparalleled place in the sterilization procedure as it existed in most states. The physician of a state institution was responsible for recognizing the feeble-minded individual and petitioning the state for that individual's sterilization. By law state sterilization boards in many cases had physician members. The New York sterilization law of 1912, for example, had a board of sterilization composed of one surgeon, one neurologist and one physician.<sup>46</sup> The physician, because of technical expertise, had an important and almost dominant part in the operation and formulation of sterilization laws for the feeble minded. Therefore the success of a sterilization program depended on the sympathy of the nation's physicians toward its

goals. American physicians, at least in California, apparently were more in favor of the sterilization of the feeble minded than of the sterilization of the mentally diseased and criminals. In California the number of laws for the sterilization of the mentally retarded was approximately twice the number of laws for the sterilization of the mentally ill.<sup>47</sup> By virtue of the position which physicians held in the decision making process for compulsory sterilization and the proportion of mentally-retarded subjects sterilized, it is presumable that the physicians during the 1920s and 1930s, by and large, were not opposed to the sterilization of the feeble minded. Physicians also made up a portion of organizations which advocated the sterilization of the feeble minded. The Human Betterment Foundation had two practicing physicians on its twenty-seven member board.<sup>48</sup>

Eugenists were cognizant of their dependence upon physicians for a successful sterilization program and expressed complete confidence in the physician's ability alone to decide who should be sterilized. Samuel J. Holmes suggested that the physician should be left to his own discretion in deciding upon candidates for sterilization.<sup>49</sup> Most members of the established medical community were committed to being an ally of the sterilization movement after the release in June of 1935 of the report by the American Neurological Association. The American Neurological Association had appointed a committee headed by Dr. Abraham Myerson to study the problem of eugenic sterilization in the United States.<sup>50</sup> The committee concluded that although voluntary sterilization was preferable to compulsory measures, the sterilization of the mentally retarded was indeed justified.<sup>51</sup> The report supported the sterilization of only those cases which were of a hereditary nature,

but spent little time discussing means of distinguishing hereditary feeble mindedness from environmentally induced cases. For the remainder of the 1930s eugenists cited the Myerson committee report as justification for the sterilization of the mentally retarded. The approval of sterilization for the feeble minded by Myerson and the American Neurological Association was of great importance to the sterilization movement.

Myerson, in his monograph The Inheritance of Mental Disease, had been one of the first researchers to reject the assertion made by prominent eugenists that the mechanism of inheritance for feeble mindedness was a simple recessive Mendelian trait. In the 1920s he had been one of the most influential opponents of the eugenists who claimed that their work was based upon the latest findings of science. Thus, his endorsement of sterilization in his later report to the American Neurological Association allowed eugenists to claim that they now had the backing of one of the most influential of the eugenic opponents. The phrase from the Myerson committee report that, "There need be no hesitation in recommending sterilization in cases of feeble-mindedness" was repeated many times by sterilization advocates.<sup>52</sup>

Paul Popenoe used the Myerson committee's conclusions on feeble mindedness and other disorders to demonstrate a new and favorable trend in the application of sterilization. Popenoe praised Myerson for giving scientific sanction to sterilization for social reasons in addition to biological reasons.<sup>53</sup>

The medical community was not without groups opposed to sterilization. Some members of the medical profession considered sterilization as a shallow and crude solution to the social problems which

plague society.<sup>54</sup> Catholic physicians made up a portion of the physicians who actively rejected the principle of sterilization. Their grounds for the rejection of sterilization were similar to those of the theologians:

the sterilization law must be considered not only biologically but also metaphysically and ethically, with a borderline area between medicine and moral theology. The Catholic view compels the rejection of this law on ethical grounds, as it cannot assume the responsibility of separating sexual union from the propagation of new life.<sup>55</sup>

Another physician John D. O'Brien rejected the sterilization of the unfit from a professional point of view; he contended that the purpose of medicine and the physician was to restore function not to destroy it. O'Brien like J. B. S. Haldane rejected the constantly reproduced economic arguments for the sterilization of the feeble minded. O'Brien summed up the view of many Catholic physicians in the United States to the sterilization of the unfit when he stated: "It seems that the medical profession in this country does not endorse sterilization or birth control--both are new rackets."<sup>56</sup>

The American medical community was far from indifferent to the American sterilization laws for the feeble minded. The Journal of the American Medical Association monitored the international sterilization movement closely throughout the 1930s. Despite some initial enthusiasm by contributors to the Journal for the Nazi sterilization law of January 1, 1934, the law did not receive favorable treatment after the middle of 1935. However, despite the rejection by the American medical community of the German sterilization program for the mentally unfit the majority of American physicians did not reject the more moderate and gradually implemented American sterilization program for the feeble minded. Most

American physicians had seen the slow and cautious evolution of sterilization programs for the unfit in the United States and had had time to accept the movement as being a normal and conservative one.<sup>57</sup>

#### Ecclesiastical Reaction

The American churches played a significant part in the sterilization controversy involving the mentally retarded. Members of different churches participated in both sterilization and anti-sterilization movements in the United States. The clergy of several churches were represented on the board of the Human Betterment Foundation. On the board were an ordained Methodist minister, the Reverend Merle Smith, an ordained Presbyterian minister, the Reverend M. E. Robert Freeman, and a Rabbi, R. I. Coffee.<sup>58</sup> In the late 1920s and early 1930s several Protestant churches began to give their moral support to selective sterilization.<sup>59</sup> Throughout the 1930s the zeal with which certain churches, with high proportions of middle-class members, endorsed sterilization increased. The Newark Methodist Council in April of 1940 gave full support to the sterilization of the unfit, including the feeble minded.<sup>60</sup>

Among religious groups the Catholic opposition to the sterilization of the mentally retarded was the strongest in the United States during the 1930s. The Catholic clergy and laity in the United States before 1931 were in a state of partial confusion over the issue of sterilization of the unfit. The confusion within the Church was resolved in December of 1931 with the pronouncement of the papal encyclical, Casti Conubii, which forbade the sterilization of any human being, fit or otherwise. The primary ecclesiastical spokesman for the Catholic



resistance to sterilization was Dr. John A. Ryan, a priest and Professor of Moral Theology at the Catholic University. Ryan stated that "as a comprehensive remedy for feeble-mindedness, sterilization is probably the shallowest proposal that has ever been made in dealing with a social problem."<sup>61</sup> The Catholic Church was able to serve as a core around which opponents of sterilization of all defectives, not only the feeble minded, could unite and organize.

The effect of churches on the sterilization movement was derived from the influence they held with the members of various professions. The Catholic Church forbade any Catholic physician or lawyer to participate in any act which would further the cause of sterilization.<sup>62</sup> Similarly, the sterilization laws of Wisconsin, Nevada, New Jersey, and New York were declared unconstitutional largely through the efforts of organized religious groups.<sup>63</sup> The resistance of religious groups and humanitarians inhibited the extension of state sterilization laws.

#### Reaction of Institutional Administrators

Laws for the sterilization of the mentally retarded were looked upon with favor by administrators of penal and welfare institutions. Penology in the late nineteenth and early twentieth centuries derived portions of its philosophy and theory from the Lombroso school of criminal anthropology.<sup>64</sup> The theory of criminal anthropology underwent massive changes from the period 1890 to 1910.<sup>65</sup> The influence of the Lombroso school remained prevalent long after social theorists had discounted the tenets of the school. Criminology and penology maintained some of the hereditarian ideas of the school of criminal anthropology in modified form throughout the 1920s and 1930s.

Criminologists and prison wardens in the 1930s no longer searched for the "criminal types," instead they looked for the mentally retarded, who they believed were responsible for most of the crimes committed. In order to obtain immediate implementation of some form of relief from overcrowding and insufficient funding, prison administrators argued that the mentally retarded had an abnormally high birth rate. Although the Myerson committee had shown in 1935 that the birth rate of the mentally retarded was not higher than the birth rate of normal persons,<sup>66</sup> as late as 1938, at the American Prison Association meeting in St. Paul, there was a plea from a prison physician, Justin K. Fuller, for relief from the great numbers of the feeble-minded individuals entering prisons on the ground that the retarded classes had some seventy-five per cent more children than were necessary to replace their population, while normal individuals were seventeen per cent deficient in the birth rate required to replace their numbers.<sup>67</sup> By placing responsibility for crime on the rapidly increasing feeble minded in society, prison administrators were able to propose the eventual physical elimination of criminality from society through sterilization of the mentally deficient.

Sterilization of the mentally-retarded criminal element was seen by institutional administrators as a means by which they could survive on their normally limited budgets. At the 1933 American Prison Association meeting held in Atlantic City, New Jersey, a plea was made by a women's prison administrator for special institutions and sterilization for feeble-minded inmates in order to relieve the already financially strained prison systems of the United States.<sup>68</sup> Clearly, for the institutional administrators part of the attraction of the idea of steriliza-

tion of the feeble minded was that it offered an easy and inexpensive means of dealing with overpopulation in prisons, and thus excessive financial demands. Prison administrators realized that any great reductions in crime would not be manifested until a generation after the implementation of sterilization; however, they were convinced that sterilization would allow them to parole the less dangerous members of their inmate population and reduce the immediate problems of overpopulation and excessive expenses.

Similarly, some educators adopted the eugenists' theory of mental retardation as the cause of disorder in society. Some school principals saw increased delinquency and crime as manifestations of the rapidly growing proportion of the feeble minded in society. In 1934 the New York State Association of Elementary School Principals approved a resolution to encourage the state legislature to study a proposal to sterilize the mentally retarded and criminal elements in the schools.<sup>69</sup> The motivation of school principals for supporting this proposal like that of prison administrators was one of economics and the over extension of the physical facilities of the school system. During the 1930s some teachers, principals, and wardens continued to blame hereditary factors for disorder in society and advocated surgical methods as the only hope of keeping society intact and economically solvent. The proposals for the surgical elimination of asocial elements of society in the 1930s was in direct opposition to the suggestions made by most social scientists for dealing with the problems. The majority of social scientists in the 1930s agreed that feeble mindedness, criminality, and other manifestations of human behavior were not transmitted as simple Mendelian recessive traits, but were the result of the social and

economic environment more than of heredity.<sup>70</sup>

#### Overview

The American idea of sterilization for the feeble minded was based upon several assumptions: first, feeble mindedness was a drain upon the progress of society; second, the disability was increasing in prominence; third, retardation could be detected by mental tests; fourth, the condition could be significantly reduced within the population by means of compulsory sterilization; and fifth, governmental intervention was required to correct the declining standards of civilization. The movement to sterilize the mentally retarded was born in the progressive era and was an obvious product of that time. The tenets of the American sterilization movement did not change significantly between the late nineteenth century and the 1930s. The understanding of the genetic mechanism responsible for feeble mindedness was imperfectly understood in the 1930s; however, knowledge about that condition was more extensive than knowledge about other conditions listed in American sterilization statutes. American professionals had less objection to the sterilization of the feeble minded than to sterilization of persons afflicted with other mental infirmities specified in American sterilization laws.

The scientific community in the United States during the 1930s was divided over the issue of sterilization. A sizable group of scientists considered the contemporary knowledge of genetics adequate to begin at least a limited sterilization program for the mentally retarded. The other group of American scientists resisted an irrevocable act, such as sterilization, for the retarded when the genetic knowledge of the

condition was still incomplete. The Catholic and other churches opposed sterilization of the retarded on scientific, moral, and ethical grounds. However, several Protestant churches supported the sterilization of the mentally defective.

The medical, legal, and corrections professions were generally tolerant of the sterilization movement in the United States. However, the medical and legal communities were far less enthusiastic about sterilization legislation for the mentally deficient than was the corrections profession. The medical profession was indispensable in the application of sterilization in almost all states, and the lack of comment or protest over the matter in the principal medical journals of the day indicates consent by silence. Sterilization of the retarded was not a matter of controversy within the legal profession after the 1920s. Because the nation's attorneys had little contact with the retarded, they were not as interested in the sterilization of the feeble minded as they were in the sterilization of criminals or the insane. Some members of the penal and teaching professions supported the sterilization of the feeble minded because they associated lack of intelligence with crime, delinquency, and disorder.

American professional's acceptance of the sterilization of the mentally retarded did not differ greatly from popular public sentiment. A survey conducted by Fortune magazine in 1937, showed that sixty-six per cent of the people interviewed approved the compulsory sterilization of mental defectives.<sup>71</sup>

## FOOTNOTES

- <sup>1</sup>Alfred Binet developed an intelligence scale in 1905.
- <sup>2</sup>Henry H. Goddard, The Kallikak Family (New York: Macmillan, 1912).
- <sup>3</sup>Richard L. Dugdale, The Jukes (New York: G. P. Putnam's Sons, 1977); see also Mark Hughlin Haller, Eugenics: Hereditarian Attitudes in American Thought (New Brunswick, N.J.: Rutgers University Press, 1963), pp. 21-22.
- <sup>4</sup>Goddard, chap. 3 passim.
- <sup>5</sup>G. Archdall Reid, The Laws of Heredity, 2nd ed. (London: Methuen & Co., 1911), p. 465.
- <sup>6</sup>Charles B. Davenport, Heredity in Relation to Eugenics (New York: Holt, 1911), p. 66.
- <sup>7</sup>Statutes of California, 1909, Chapter 720; Public Acts of Connecticut, 1909, Chapter 209; Acts and Joint Resolutions of Iowa, 1911 Chapter 129; Acts of New Jersey, 1911, Chapter 190.
- <sup>8</sup>Laws of the State of Indiana, 1907 Chapter 215; Public Acts of Connecticut, 1909, Chapter 209; Acts and Joint Resolutions of Iowa, 1911, Chapter 129.
- <sup>9</sup>Laws of the State of Indiana, 1907, Chapter 215; Public Acts of Connecticut, 1909, Chapter 209; Acts and Joint Resolutions of Iowa, 1911,
- <sup>10</sup>Acts of New Jersey, 1911 Chapter 190. For a fuller explanation of Goddard's classification, moron, see Henry H. Goddard, The Kallikak Family (New York: Macmillan, 1912).
- <sup>11</sup>Haller, Eugenics, p. 97.
- <sup>12</sup>Laws of New York, 1912, Chapter 445; Statutes of California, 1913, Chapter 363; Acts and Joint Resolutions of Iowa, 1913, Chapter 187 and 1915, Chapter 202; Laws of North Dakota, 1913, Chapter 56, Kansas Session Laws, 1913, Chapter 305 and 1917, Chapter 299; Public Acts of Michigan, 1913, Act No. 34; Laws of South Dakota, 1917, S. B. 257, Chapter 236.
- <sup>13</sup>Laws of New York, 1912, Chapter 445; Laws of North Dakota, 1913, Chapter 187; Kansas Session Laws, 1913, Chapter 305; Public Acts of Michigan, 1913, Act No. 34; Laws of South Dakota, 1917, S.B. 257 Chapter 236.

<sup>14</sup>Laws of New York, 1912, Chapter 445; Public Acts of Michigan, 1913, Chapter 305; Wisconsin Session Laws, 1913, Chapter 693; Laws of Nebraska, 1915, Chapter 237; General Laws of Oregon, 1917, Chapter 279; Laws of South Dakota, 1917, S.B. 257, Chapter 236; Laws of New Hampshire, 1917, Chapter 181; Kansas Sessions Laws, 1917, Chapter 299.

<sup>15</sup>J. H. Landman, Human Sterilization: The History of the Sexual Sterilization Movement (New York: Macmillan Co., 1932), pp. 304-305. See also Goddard, pp. 304-305.

<sup>16</sup>Ibid., pp. 304-305.

<sup>17</sup>Ibid., pp. 269-272.

<sup>18</sup>Ibid., pp. 294-297.

<sup>19</sup>47 Supreme Court Report, 584, 274 U. S. 2200.

<sup>20</sup>The Virginia sterilization statute provided for the sterilization of persons confined to state institutions who were suffering from epilepsy, hereditary forms of insanity, feeble mindedness, idiocy, and imbecility. The law required the superintendent of the institution to make application to the board of directors of the institution. Thirty days notice was allowed to the inmate considered for the surgical procedure. In the event of conviction provisions were made for an appeal to the next higher court within thirty days.

<sup>21</sup>Michael F. Guyer, Being Well-Born (Indianapolis: Babbs-Merrill Co., 1927), p. 337.

<sup>22</sup>Samuel J. Holmes, Human Genetics and Its Social Imports (New York: McGraw-Hill Book Co., Inc., 1936), p. 236.

<sup>23</sup>H. L. Mencken, "Utopia by Sterilization," The American Mercury XVI (August, 1937), p. 408.

<sup>24</sup>Paul Popenoe and Roswell Hill Johnson, Applied Eugenics (New York: Macmillan Co., 1933), p. 129.

<sup>25</sup>Haller, Eugenics, p. 110.

<sup>26</sup>Leon Whitney, The Case for Sterilization (New York: F. A. Stakes Co., 1934), p. 14.

<sup>27</sup>Popenoe and Johnson, p. 157.

<sup>28</sup>Ezra S. Gosney and Paul Popenoe, Sterilization for Human Betterment (New York: Macmillan, 1931), p. 130.

<sup>29</sup>Harold Ward, "The Dilemma of Eugenics," The New Republic, LXXXII (April 24, 1935), p. 306.

<sup>30</sup>Holmes, Human Genetics, p. 186.

- <sup>31</sup>Gosney and Popenoe, p. viii.
- <sup>32</sup>Whitney, p. 14.
- <sup>33</sup>Samuel J. Holmes, The Eugenic Predicament (New York: Harcourt Brace & Co., 1933), pp. 39-40.
- <sup>34</sup>New York Times (June 21, 1932), p. 14.
- <sup>35</sup>"Mass Sterilization for Human Betterment," Literary Digest, CXIV (August 6, 1932), p. 16.
- <sup>36</sup>Haller, Eugenics, pp. 178-179.
- <sup>37</sup>H. S. Jennings, Henry Walters Professor of Zoology and Director of the Zoological Laboratory at Johns Hopkins University, was a moderate eugenicist. He did much to popularize the case for eugenics in several monographs, the most important of which was Prometheus: Biology and the Advancement of Man. Jennings attempted to show that environment as well as heredity was involved in the formation of the human race. Jennings reacted against those eugenicists who stressed only the role of heredity in the formation of man and the futility of social reform.
- <sup>38</sup>John A. Ryan, "Futile Immorality," The Forum, XCIV (July, 1935), p. 30.
- <sup>39</sup>"Sterilization Opposed as Way of Bettering Humanity," Science News Letter, XXXIII (May 14, 1938), p. 316.
- <sup>40</sup>Lancelot Hogben, a prominent British population geneticist, embryologist, and scientific popularizer, wrote several monographs in an attempt to discredit the solely hereditarian orientation in eugenics. His most important book dealing with eugenics was Nature and Nurture.
- <sup>41</sup>Lancelot Hogben, Nature and Nurture (London: George Allen 1933), p. 33.
- <sup>42</sup>H. M. Parshley, "Eugenics, 1932," The Nation, CXXXIV (May 18 1932), p. 569.
- <sup>43</sup>Ibid., p. 571.
- <sup>44</sup>R. B. Cattell, "Letter to the Editor," Eugenics Review, XXVIII (January, 1937), p. 334.
- <sup>45</sup>J. H. Landman, "Sterilization: A Pointedly Frank Discussion of a Grave Social Problem," Current History, XLIV (August, 1936), p. 93.
- <sup>46</sup>Gosney and Popenoe, p. 164.
- <sup>47</sup>Landman, Human Sterilization, pp. 304-305.



<sup>48</sup>Ezra S. Gosney, "Twenty-Eight Years of Eugenic Sterilization in California," Eugenical News, XXII (September/October, 1937), p. 40.

<sup>49</sup>Holmes, The Eugenic Predicament, p. 164.

<sup>50</sup>The American Neurological Association committee to study human sterilization was composed of James B. Ayer, M.D., Tracy J. Putnam, M.D., Clyde E. Keeler, Sc.D., Leo Alexander, M.D., Abraham Myerson, M.D., who chaired the committee. Myerson was the most experienced and distinguished member of the committee. Previous to producing the committee report entitled Eugenical Sterilization: A Reorientation of the Problem in 1936, Myerson had published The Inheritance of Mental Disease. This monograph was a review of the criticism of the conservative eugenics programs advocated by eugenicists such as Goddard, Davenport and others.

<sup>51</sup>Abraham Myerson et al., Eugenical Sterilization: A Reorientation of the Problem (New York: Macmillan Co., 1936), p. 180.

<sup>52</sup>New York Times (March 8, 1936), p. 9.

<sup>53</sup>Paul Popenoe, "Sterilization in Practice," The Survey, LXXIV (June, 1938), p. 202.

<sup>54</sup>Journal of the American Medical Association (November 19, 1934), p. 1463.

<sup>55</sup>Journal of the American Medical Association (January 6, 1934), p. 57.

<sup>56</sup>John D. O'Brien, "Race Betterment," The Commonwealth, XIX (March 2, 1934), p. 497.

<sup>57</sup>Journal of the American Medical Association (May 5, 1934), p. 1502.

<sup>58</sup>Gosney, "Twenty-Eight Years of Eugenic Sterilization in California," p. 40.

<sup>59</sup>Landman, Human Sterilization, p. 9.

<sup>60</sup>"Methodist Conference Approves Sterilization," The Commonwealth, XXXII (April 26, 1940), p. 2.

<sup>61</sup>Ryan, "Futile Immorality," p. 30.

<sup>62</sup>Ibid., p. 31.

<sup>63</sup>J. H. Landman, "Sterilization and Social Betterment," Survey Graphics, XXV (March, 1936), p. 163.

<sup>64</sup>Hermann Mannheim ed., Pioneers in Criminology (Chicago: Quadrangle Books, Inc., 1960), pp. 179-216.

<sup>65</sup>Haller, Eugenics, p. 115.

<sup>66</sup>Myerson, Eugenical Sterilization, p. 152.

<sup>67</sup>Justin K. Fuller, "A Health Program for Prisons," Proceedings of the Sixty-Eighth Annual Congress of the American Prison Association St. Paul, Minnesota October 2-7, 1938 (New York: American Prison Association, 1938), p. 319.

<sup>68</sup>Ellen C. Potter, The Problems of Women in Penal and Correctional Institutions. Proceedings of the Sixty-Third Annual Congress of the American Prison Association: Atlantic City, New Jersey, October 8-13, 1933 (New York: American Prison Association, 1933), p. 108.

<sup>69</sup>New York Times (December 29, 1934), p. 7.

<sup>70</sup>D. M. Le Bourdais, "Purifying the Human Race," North American Review, CCXXXVIII (November, 1934), p. 434.

<sup>71</sup>"Fortune Quarterly Survey IX," Fortune, XVI (July, 1937), p. 106.

## CHAPTER III

### THE INSANE

#### Early Concepts of Mental Illness

The twentieth century has been a period of intense effort devoted to understanding the diseases of the human mind. However, even today the causes, mechanisms, and cures of these diseases are still not completely understood. During the first three decades of the century not only were these questions of principal importance, but so was the question of hereditary transmission of mental illness. An understanding of the means of transmission of mental illness was especially important because of the efforts of eugenicists to convince legislators and citizens of the need for compulsory sterilization laws directed at the mentally ill.

When the first few sterilization laws were enacted in the United States, knowledge about the genetics of mental disease was meager. One of the most widely used genetics books of the early twentieth century, The Laws of Heredity by G. Archdall Reid, classified "feeble mindedness" and "lunacy" as the two types of insanity known. He defined a lunatic as an individual

quite normally capable of recollecting experiences and learning dexterities and habits. But the universe his mind constructs for him differs markedly from that created by the minds of normal people. He feels and thinks abnormally. His experiences impress his mind in an unusual way, and draws unusual inferences from them. He has hallucinations and delusions.

This definition of mental illness, despite its obvious brevity and overgeneralization, was one of the best available at the time. Differentiations between different manifestations of lunacy were made by some human geneticists and eugenicists, but the description given by Reid was fairly typical.<sup>2</sup> It was descriptions such as these which legislators used to define the condition of lunacy when they began to consider laws for dealing with the mentally ill in society.

Theories of the transmission or inheritability of mental illness were inadequately studied in the early twentieth century. Genealogical studies of the classic "degenerate" families, Kalikak and Juke had demonstrated that mental illness as well as mental retardation tended to occur in some families in larger proportions than appeared in the general population.<sup>3</sup> This high concentration of mental illness within these families stimulated eugenicists and geneticists in the attempt to reconcile these observations with the newly rediscovered works of Gregor Mendel. Insanity in the early twentieth century was attributed to a mechanism of inheritance not unlike that observed in the transmission of eye color.<sup>4</sup> Charles B. Davenport, the director of the department of experimental evolution at Cold Springs Harbor, Long Island, New York, and secretary of the eugenics section of the American Breeders' Association contended that the conditions of mental deficiency and defect were, carried by a 'nervous' or even a 'normal' person, just as blue eyes may be carried by brown eyed parents, or light brown hair by dark haired parents. A 'nervous' person is thus frequently recessive in the factor that makes for mental strength and is apt to carry defective germ cells. . . .<sup>5</sup>

Therefore, legislators who considered laws for the sterilization of "lunatics" were offered advice by eugenicists and scientists that insanity was a simple Mendelian trait which could be eliminated in large part by

sterilization.

### Sterilization Legislation

The first laws for the eugenic sterilization of the unfit, passed in Indiana (1907), and Washington (1909), did not include provisions for the sterilization of the insane or mentally ill.<sup>6</sup> These laws were directed against the criminal and feeble-minded elements of society. California in its first compulsory sterilization statute, enacted in 1909, included a provision for the sterilization of those patients in California's institutions who suffered from recurrent hereditary insanity.<sup>7</sup> However, in 1913 this law was repealed so that a more inclusive and constitutional law could be substituted. In the sterilization law of 1913 no provisions were included for the sterilization of mentally ill or deranged persons.<sup>8</sup> In the revised statute of 1916 California included provisions for the sterilization of state inmates suffering from "incurable chronic mania" and "dementias" before they were released from the state institution.<sup>9</sup> It was this provision, which went into effect in 1917, under which in excess of fifty per cent of the sterilizations of the mentally ill in the United States were performed.<sup>10</sup> However, the statute of 1916 remained on the books throughout the 1930s.

Iowa in 1911 enacted its first sterilization statute. The statute provided for the sterilization of those persons in state institutions who suffered from epilepsy.<sup>11</sup> In an effort to strengthen the powers of the state over the "unfit" members of society and to protect the law from possible declaration of unconstitutionality, Iowa passed a new statute in 1913. This law retained the provision for the sterilization

of epileptics and added a clause which called for the sterilization of "lunatics" and the "insane".<sup>12</sup> The Supreme Court of Iowa declared the sterilization law of 1913 unconstitutional on the grounds that it violated the principle of due process of law, that it constituted cruel and unusual punishment, and that it was a bill of attainder.<sup>13</sup> In 1915 Iowa passed a law which provided for the sterilization of the insane, but not for the epileptic or the lunatic.<sup>14</sup> Iowa's last sterilization law, enacted in 1929, was intended to be more in line with a recent U. S. Supreme Court decision and included the same provisions for the sterilization of the mentally ill that the 1915 law contained.<sup>15</sup>

Before America's entry into World War I, several other states enacted laws for the sterilization of the mentally ill and other "unfit" members of society. During the course of the progressive era the primary targets of sterilization legislation for the mentally ill were persons classified under the imprecise label of insane. In the years before the first World War, Connecticut, New York, North Dakota, Kansas, Michigan, Wisconsin, Nebraska, and Oregon all passed laws for the sterilization of patients in institutions who were judged to be insane.<sup>16</sup> Of the states which passed sterilization laws for the mentally ill in this early period only California differentiated between the types of mental illness as defined by the psychiatric profession. Of the eleven statutes for the sterilization of the insane passed in the progressive era only one state statute had not been repealed or replaced by 1931. The vast majority of states which enacted sterilization laws for the mentally ill passed such laws in the 1920s. In the post World War I era laws for the sterilization of the insane were enacted in the following states: Washington (1921), Delaware (1923), Montana (1923), Oregon

(1923), Idaho (1925), Minnesota (1925), South Dakota (1925), Utah (1925), North Dakota (1927), Connecticut (1929), Michigan (1929), Nebraska (1929), Maine (1931), and Vermont (1931).<sup>17</sup> Five of these laws were no longer active by the beginning of the 1930s. Oregon replaced its law by a 1925 statute which had no provision for the sterilization of the insane. South Dakota's law for the sterilization of the insane was repealed and another which made no mention of the insane was enacted in 1927. Under the pressure of Supreme Court decisions on sterilization laws the remaining three states, Delaware, Idaho, and Utah, enacted new sterilization statutes in 1929. None of these new laws made provisions for the sterilization of those individuals designated as insane. Of the twenty-six laws enacted by eighteen states designating insanity as a condition warranting sterilization, eighteen acts were still in effect in 1931.<sup>18</sup>

A number of states followed California's example of considering insanity hereditary. Virginia (1924), Indiana (1927), Delaware (1929), West Virginia (1929), Arizona (1929), Vermont (1931), and Oklahoma (1931) enacted laws based on California's law of 1909 in regard to the sterilization of persons demonstrating "hereditary insanity which is recurrent". By the beginning of the 1930s of the eight such laws enacted, seven were still in effect.<sup>19</sup>

Epilepsy was also considered a hereditary mental illness in the early portion of the twentieth century. Epilepsy, along with insanity, received much attention in the sterilization laws passed in the progressive era. Epilepsy was given so much attention in American sterilization laws because the disease was considered to be the cause of much crime and social degeneracy. Prior to the United States' entry into World

War I five states passed laws for the sterilization of epileptics, Iowa being the pioneer. Sixteen additional states joined these five states in the 1920s and early 1930s in the legal compulsory sterilization of epileptics. By the beginning of the 1930s eighteen of the twenty-eight laws passed by twenty-one states were still in effect.<sup>20</sup>

Two states, New Hampshire and Maine, passed laws which provided for the sterilization of persons classified broadly as "mentally diseased".<sup>21</sup> These laws were passed in 1921 and 1925, respectively. When the New Hampshire law of 1921 was repealed and a stronger law enacted in 1929, the general term "mentally diseased" was dropped from the state sterilization law.<sup>22</sup> Maine's law using the term "mentally diseased" remained on the books throughout the 1930s.

Several states which were pioneers in the sterilization movement initiated legislation directed at the mentally ill in the first and second decades of the twentieth century. At the time when these states enacted laws for the sterilization of the mentally ill little was known of the disorders which make up the general classification of diseases called insanity. Nor were the means of transmission of these disorders well understood. All diseases of the mind which showed some evidence of hereditary transmission were considered simple Mendelian traits, because of the enthusiasm for the recent rediscovery of Mendel's work. With all of the manifestations of mental illness classified as simple Mendelian traits, legislators, with encouragement from eugenicists, initiated laws to eliminate these diseases from society by means of the panacea of sterilization.

During the 1920s new information concerning the inheritance of mental disorders was becoming available.<sup>23</sup> The information collected,



however, did not support earlier ideas of inheritance, and confusion among scientists as well as laymen was widespread. Many legislators ignored biological facts and the advice of experts in the drafting of sterilization statutes. In the words of J. H. Landman, an attorney and student of human sterilization, "It seems what the psychiatrist and psychologists do not know, some legislators do know concerning psychiatry and psychology."<sup>24</sup> Thus, the legislation which was produced in the first three decades of the twentieth century was ill based and sometimes completely contradicted by scientific opinion.

#### The Eugenists: Defenders of Sterilization

Eugenists used the same arguments in advocating the sterilization of the insane as they did in trying to bring about sterilization laws for the feeble minded and criminals. They used the argument of disproportionate reproduction of the insane as justification for immediate preventative measures. The claims of population expansion among the insane made by alarmist eugenists were frequently sensational and totally beyond possibility. One radical eugenist remarked that if the present rate of mental cases continued unchecked for the next seventy-five years, half of the population would be forced to labor in order to support the insane.<sup>25</sup> E. S. Gosney, president of the Human Betterment Foundation, stated:

For half a century, since serious attempts were first made to get an accurate census of persons with mental disease in the United States, the number has been found to be increasing, steadily and rapidly. The number of known mentally diseased persons is now three times as great, in proportion to the total populations as it was in 1880. . . . Calculations show that it is actually something like four in each hundred of the population, or 4,800,000 of the citizens of the United States who, before they die, will be classified as 'insane'.<sup>26</sup>

The alleged increase in the numbers of people who suffered from mental disease provided the eugenists with another argument for the implementation of compulsory sterilization: cost. In 1929 Gosney estimated that the 300,000 patients in mental hospitals suffering from some form of insanity cost the state \$150,000,000 per year in maintenance. This figure was increased considerably when H. M. Pollock's calculation were used to estimate the loss of earning capacity of the patients suffering from insanity.<sup>27</sup> Gosney estimated that the total cost to society for the care of the insane was about \$630,000,000 per year.<sup>28</sup> Eugenists also seldom failed to mention the untold amounts of suffering which could be prevented by the sterilization of the insane.<sup>29</sup> In order to correct these burdens on society and the individual, eugenists advocated the forced sterilization of the mentally diseased.

The eugenists' appeal for compulsory sterilization went beyond advocating the sterilization of those who manifested mental illness. Studies done in the 1920s indicated that the insane were less fertile than mentally healthy people and as a group were not able to replace their numbers.<sup>30</sup> Studies which demonstrated that the insane were a gradually dying group combined with rapidly increasing admissions to mental facilities made it clear to eugenists that manifestly healthy persons were the parents of many mentally ill people. Gosney accurately reflected the attitude of most eugenists in the 1930s regarding the sterilization of persons not themselves demonstrating mental illness. Gosney proposed that people who were themselves not insane,

have insane ancestors; likewise insane collateral relatives in most cases. The number of persons who are themselves not much affected mentally, but are yet carriers of a heritage that may lead to mental disease in their descendants, is probably much greater than is the number of those who are

themselves affected. Few if any of these carriers can be identified beyond doubt, but the number is demonstrably large; they are spreading defective germ plasm continually through the sound part of the community, and many of them can be pointed out with probable accuracy through a study of ancestry.<sup>31</sup>

The preference of some eugenicists for pedigree studies instead of laboratory research caused some informed individuals to become suspicious of the competency of eugenicists to decide important issues such as the individual's right to reproduce.

### Scientific Objections

The medical and scientific communities were deeply divided over the issue of the sterilization of the mentally ill. One group of medical and scientific experts rejected the idea of sterilizing the insane on grounds that the available knowledge about mental disease was not adequate to initiate a program of mass sterilization. Another group of practitioners of science was either convinced that enough facts were available to initiate a program of sterilization for the mentally ill, or that lack of complete knowledge about mental illness did not warrant inactivity in dealing with a severe social problem.

Eugenicists in the attempt to get compulsory sterilization laws either enacted or used, sometimes claimed that the hereditary mechanism involved in the transmission of mental disease was simpler than data indicated. As late as the early 1920s several eugenicists, such as Samuel J. Holmes, claimed that feeble mindedness, epilepsy, insanity, and chorea were transmitted from one generation to the next as simple Mendelian traits.<sup>32</sup> However, in 1923 Abraham Myerson delivered a paper at the Second International Congress of Eugenics which summed up his

findings and the findings of others on the hereditary nature of mental disease and deficiency. Myerson stated that schizophrenia, manic-depressive psychosis, epilepsy, paranoia, and senile psychosis were not transmitted as simple Mendelian traits.<sup>33</sup> Many of the scientific community were of the same philosophy as Paul O. Komara, associate secretary of the National Committee for Mental Hygiene, who stated that

in the face of this uncertainty and the all but hopeless prospect of basing a eugenic program on our present knowledge, it would appear that we are dealing with a highly complex problem that needs a great deal more study and infinitely more knowledge before coming to conclusions as final as those assumed in such wild sterilization proposals.<sup>34</sup>

Eugenists stressed the innate or hereditary nature of mental disease as a justification for initiating a compulsory sterilization program. However, some social scientists and psychologists conducted studies on epilepsy and produced results which cast such doubt on the hereditary nature of the disease that some scientists began to believe that epilepsy was a totally acquired disorder.<sup>35</sup> Similar assaults were made by scientists on the hereditary nature of other mental illnesses such as manic-depressive psychosis. Horatio M. Pollock, Benjamin Malzberg, and Raymond G. Fuller<sup>36</sup> in 1932 at the Third International Congress of Eugenics presented a paper which discounted heredity as the cause of manic-depressive psychosis.<sup>37</sup> This shaking of the theory of hereditary causation of epilepsy and other mental illnesses even forced some pro-sterilization advocates to admit that too little was known about the nature of mental disease to initiate a program of mass sterilization.<sup>38</sup>

The scientific community was almost unanimous in suggesting continued and more detailed studies on mental illness; however, not all

scientists were willing to advocate the complete cessation of compulsory sterilization programs until more data was collected. In 1932 the Harvard biologist, H. M. Parshley, fully cognizant of the lack of knowledge concerning the origin and transmission of mental disease, maintained that mental diseases could be considered to be transmitted much like common Mendelian recessive traits and that selective sterilization applied to the mentally diseased would be beneficial to society.<sup>39</sup> In 1935 the Myerson committee issued a report stating that the state of the present knowledge concerning the transmission of mental diseases did not warrant the sterilization of persons thought to be carriers but themselves not actually suffering from the disease. The committee called for continued research on mental disease, and in the meantime, while further research was being carried out, patients suffering from such mental diseases as schizophrenia, manic-depressive psychosis, and epilepsy should be sterilized.

Despite the conclusions of the Myerson report there were a number of scientists who were hesitant to commit such an irreversible act as sterilization without more conclusive scientific data. Among members of this group was J. B. S. Haldane, who objected to the sterilization of the insane because it was an act motivated more by emotion than intellect and reason.<sup>41</sup>

During the 1930s there was little disagreement among members of the scientific community that the origin and transmission of mental disease were inadequately understood. Confusion over the means of transmission of mental illness caused disagreement among scientists about the best way of treating the problem. Ironically, far more was known about the transmission of feeble mindedness than insanity; yet twice as many mentally ill persons were sterilized under state laws as feeble minded

individuals.<sup>42</sup> This lack of correlation between scientific knowledge and practice alienated some scientists from the movement.

#### Medical Reaction

The general reaction of the medical community to the sterilization of the mentally ill was somewhat more subtle than that of the scientific community. The numbers of entries in the Journal of the American Medical Association concerned with sterilization of the insane were few in the 1930s.

Physicians made up a relevant portion of the membership of several eugenics organizations which supported sterilization of the insane, such as the Human Betterment Foundation. One of the most important and radical eugenicists of the 1920s and 1930s was Haven Emerson, a practicing New York City physician. Emerson believed that sterilization laws were unnecessary, as the decision to sterilize should be left solely to the physician. However, if laws were to be passed then he believed that the physician should share in the application and selection of candidates under the law, and he also believed that the physician should play a part in the formulation of sterilization legislation.<sup>43</sup> Emerson represented a portion of the medical profession which favored the use of sterilization laws for the insane. Some physicians, more cautious than Emerson, nonetheless supported sterilization laws for the mentally ill, despite the lack of knowledge about the heredity of the mental diseases.<sup>44</sup> This general philosophy was summed up well by an English physician, Dr. Charles Rankin in the Journal of the American Medical Association:

although the part played by heredity in mental deficiency [including mental diseases] cannot at present be exactly assessed, it cannot be questioned that sterilization of mental defectives would do something to reduce the incidence of the condition in our population.<sup>45</sup>

Physicians were very important to the carrying out of the sterilization of the insane, for not only were they charged with its execution, but it was their responsibility to diagnose insanity and recommend sterilization to state boards.

Not all physicians took the advice of the Myerson committee and accepted the idea of participating or approving the compulsory sterilization procedures. Dr. Foster Kennedy, Professor of Neurology at Cornell Medical College, categorically rejected the construction of institutions for the purpose of carrying out sterilization operations on the insane and defective. He said that construction of such edifices would be equivalent to building altars to unknown deities.<sup>46</sup> Furthermore, Kennedy rejected the sterilization of individuals suffering from schizophrenia and manic-depressive psychosis on ethical grounds. Kennedy alleged that the sterilization of mentally disturbed persons could cost the world something it needed very desperately--brilliant minds and perhaps genius. In support of his argument that man had no right to alter the course of human history with a scalpel, Kennedy cited a list compiled by Lange-Eichenbaum of great men who supposedly suffered from some form of mental illness. The list included Beethoven and Newton (paranoid psychopaths), Blücher (manic-depressive), and Goethe, Hauff, and Poe, who were all either neurotics, psychopaths, or schizophrenics.<sup>47</sup>

Myerson, after the issuing of his report to the American Neurological Association, felt that the report was much too often used

to justify compulsory sterilization laws for the mentally ill. Only a year after the report was published, he wrote a letter to the editor of the New York Times in which he stated that despite evidence of the heritability of disorders such as manic-depressive psychosis and schizophrenia as well as feeble mindedness, the genetic mechanism was so little known that sterilization was not only useless but perhaps harmful. He went on to reemphasize a major part of the committee's conclusion that what eugenics needed was not more legislation but more research.<sup>48</sup>

#### Ecclesiastical Reaction

Churches during the 1930s were quite varied in their reaction to sterilization of the insane. Some Protestant churches had endorsed the implementation of sterilization laws concerning the unfit.<sup>49</sup> However, because sterilization did not violate any basic doctrine of the various sects, there was little discussion of sterilization of the unfit from the Protestant point of view in popular journals. The Catholic Church before the 1930s was quite divided over the issue of sterilization of the unfit, especially the insane and the feeble-minded. Some members of the high clergy in the United States were hesitant to act upon the issue of sterilization in the 1920s and 1930s.<sup>50</sup> The Catholic Church, however, was not united in its opposition to the sterilization of the unfit. A Roman Catholic priest, Father Joseph Mayer, associated with the Institute for Social Work at the University of Freiburg, led a pre-encyclical movement within the Church which was in favor of eugenic sterilization in some cases. Mayer defended the use of sterilization using the historical precedents of castration set by the early Church fathers and



popes.<sup>51</sup> Mayer's argument rested upon the assumption that psychopaths, who were the most important subjects of sterilization laws in Mayer's opinion, had no individual or human rights. Therefore, the sterilization of such persons did not violate the rights of the individual to reproduce. Furthermore, the morality of the psychopath was not affected by the operation of sterilization, because the psychopath actually had no sense of morality.<sup>52</sup> These arguments produced by Mayer were translated and published in the United States by Paul Popenoe. The condemnation of these arguments by the highest authority of the Catholic Church did not stop Popenoe from continuing to use the arguments of Mayer and other pro-sterilization clergymen.<sup>53</sup>

Even before the promulgation of the Pope's encyclical in 1930 there was some strong opposition to the sterilization of the unfit. Opposition to sterilization rested on the argument that the right of the individual to procreate, regardless of his mental or physical state must not be interfered with by magistrates of an earthly government.<sup>54</sup> Conservative Catholic opposition to sterilization laws was expressed by the Reverend John A. Ryan when he stated, "We will continue to fight against this immoral policy with all the power and influence and resources that we can command."<sup>55</sup> Following the issuing of Casti Conubii, the Catholic position in the United States was fairly uniform in its opposition to the sterilization of anyone, for any purpose. By the encyclical the Church was able to solidify lay Catholic opposition to the sterilization laws within the professions as well as within the voting public.<sup>56</sup>

### Legal Reaction

Throughout the 1930s the issue of the sterilization of the unfit was important in juridical circles, although there was little concern given specifically to the sterilization of the mentally diseased. Despite the fact that the number of sterilized people in the United States suffering from some form of mental illness was nearly twice as large as the number of feeble minded sterilized, there was little interest in sterilization laws as they applied to the mentally ill in the 1930s. J. H. Landman, a professor of law at the City College of New York, in his massive study of sterilization laws in the United States, Human Sterilization: The History of the Sexual Sterilization Movement, concluded that the majority of legislation on the books dealing with mental disease was enacted in monumental ignorance by legislators who did not counsel experts.<sup>57</sup> He further commented

The execution of the various human sterilization laws reveals a glaring discrepancy between science and fact. . . . About twice as many operations were performed on the insane as on the feeble-minded. Yet, all eugenicists would agree that feeble-mindedness is much more hereditary than insanity. The number of operations on the feeble-minded should have exceeded that of the insane.<sup>58</sup>

### Reactions of Institutional Administrators

From the late nineteenth century through the 1930s prison and corrections administrators were burdened with large inmate populations and inadequate budgets.<sup>59</sup> The increasing cost of insanity to the public was brought to the attention of readers in articles written by eugenicists. The tendency to associate feeble mindedness and insanity with crime made the corrections directors throughout the country allies of the

eugenists, who advocated the sterilization of the mentally ill. Paul Popenoe pointed out that since data collected in the late 1920s indicated that prisons were not filled with persons of sub-normal intelligence, attention must be turned from feeble mindedness to insanity as the cause of crime.<sup>60</sup> This new orientation in the search for the causative agent of crime allowed prison administrators to advocate sterilization as a means of alleviating their economic dilemma. Justin K. Fuller at the 1938 American Prison Association Conference at St. Paul, Minnesota, lamented that the excellent sterilization laws on the books were used too infrequently. Fuller also observed that it was tragic that such harm could be done to a worthy program such as sterilization by a newspaper report which pilloried a good and scientific public servant for carrying out these laws while making a martyr of a defective or psychopath.<sup>61</sup>

There were many people from different quarters who attempted to discredit the economic argument of the prison administrators and the eugenists. Harold Ward, a popularizer of the case against compulsory sterilization laws, demonstrated how little social-welfare programs for the mentally ill and defective cost in comparison with larger governmental expenditures or even the estates of the more wealthy businessmen in the country.<sup>62</sup> Landman recognized the economic argument for sterilization, but was not convinced of the necessity of resorting to surgery. In an article, published in 1935, Landman calculated the loss to society and the individual caused by mental illness in New York alone at \$143,602,253,<sup>63</sup> an amount which was probably greater than the estimates of most eugenists. Despite this tremendous amount of financial drag on society, Landman did not recommend sterilization of the

mentally diseased under laws which rested on an unscientific basis.

#### Overview

The sterilization laws for the insane, although enacted on inadequate and sometimes erroneous scientific assumptions, were less debated and controversial than similar laws for the sterilization of the feeble minded. Because of the absence of direct opposition from the legal, medical, and scientific professions, almost twice as many people suffering from some form of insanity were sterilized as people suffering from mental retardation. The sterilization of the mentally ill was lost as a separate and important issue in the greater controversy over sterilization laws for the feeble minded and criminal. While the Catholic Church presented some opposition to the sterilization of the mentally ill, more effort was directed at the general moral issue of sterilization, or the specific laws for the mentally retarded. The only real ally of the sterilization statutes directed at the mentally ill were the eugenicists and penologists. The penologists accepted the word of the eugenicists that crime was directly related to mental illness. This correlation between crime and insanity complemented the correlation between crime and feeble mindedness established much earlier by eugenicists and anthropologists of the Lombroso school. The controversy over the sterilization of the insane was simply an indistinguishable part of the greater controversy over the principle of sterilization for asocial elements of the population.

FOOTNOTES

<sup>1</sup>G. Archdall Reid, The Laws of Heredity, 2nd ed. (London: Methuen & Co., 1911), p. 466.

<sup>2</sup>Some eugenists, usually those with scientific training, categorized insanity more in accord with the classification system of psychologists. See Charles B. Davenport, Heredity in Relation to Eugenics (New York: Holt, 1911), pp. 77-79.

<sup>3</sup>Samuel J. Holmes, Human Genetics and Its Social Imports (New York: McGraw-Hill Book Co., Inc., 1936), pp. 184-186.

<sup>4</sup>Reid, p. 470.

<sup>5</sup>Davenport, p. 97.

<sup>6</sup>Laws of the State of Indiana, 1907, Chapter 215; Session Laws of Washington, 1909, Criminal Code, Section 35.

<sup>7</sup>Statutes of California, 1909, Chapter 720.

<sup>8</sup>Statutes of California, 1913, Chapter 363.

<sup>9</sup>Statutes of California, 1916, Chapter 776.

<sup>10</sup>Statutes of California, 1917, Chapter 489.

<sup>11</sup>Acts and Joint Resolutions of Iowa, 1911, Chapter 129.

<sup>12</sup>Acts and Joint Resolutions of Iowa, 1913, Chapter 187.

<sup>13</sup>(1914)216 Fed. 413.

<sup>14</sup>Acts and Joint Resolutions of Iowa, 1915, Chapter 202.

<sup>15</sup>Acts and Joint Resolutions of Iowa, 1929, H.F. 243.

<sup>16</sup>Public Acts of Connecticut, 1909, Chapter 209; Laws of New York, 1912, Chapter 445, Laws of North Dakota, 1913, Chapter 56; Kansas Session Laws, 1913, Chapter 305 and 1917, Chapter 299; Public Acts of Michigan, 1913, Act No. 34; Laws of Nebraska, 1915, Chapter 237; General Laws of Oregon, 1917, Chapter 279.

<sup>17</sup>Session Laws of Washington, 1921, Chapter 53; Laws of Delaware, 1923, Chapter 62; Laws of Montana, 1923, Chapter 164; General Laws of Oregon, 1923, Chapter 194; General Laws of Idaho, 1925, Chapter 194; Minnesota Statutes, 1925, Chapter 154; Laws of South Dakota, 1925, S.B. 222 Chapter 164; Laws of Utah, 1925, Chapter 82; Laws of North Dakota, 1927, Chapter 263; Public Acts of Connecticut, 1918, Chapter 209; Public Acts of Michigan, 1923, Act No. 285; Session Laws of Nebraska, 1929, Chapter 163; Acts of Maine, 1925, Chapter 208; Acts of Vermont, 1931, No. 174.

<sup>18</sup>J. H. Landman, Human Sterilization: The History of the Sexual Sterilization Movement (New York: Macmillan Co., 1932), pp. 304-305.

<sup>19</sup>Laws of Virginia, 1924, Chapter 394; Laws of the State of Indiana, 1927, Chapter 241; Laws of Delaware, 1929, Chapter 246; Acts of West Virginia, 1929, Chapter 4; Acts, Resolutions and Memorials of Arizona, 1929, Chapter 44; Acts of Vermont, 1931, No. 174; Session Laws of Oklahoma, 1931, Chapter 26, Act 3.

<sup>20</sup>Landman, Human Sterilization, pp. 304-305.

<sup>21</sup>Laws of New Hampshire, 1921, Chapter 152; Acts of Maine, 1925, Chapter 208.

<sup>22</sup>Laws of New Hampshire, 1929, Chapter 138.

<sup>23</sup>Mark Hughlin Haller, Eugenics: Hereditarian Attitudes in American Thought (New Brunswick, N.J.: Rutgers University Press, 1963), p. 178.

<sup>24</sup>Landman, Human Sterilization, pp. 258-259.

<sup>25</sup>C. W. Bathwell, "You've Got to Pay," Canadian Magazine, LXXXI (April, 1934), p. 3.

<sup>26</sup>Ezra S. Gosney and Paul Popenoe, Sterilization for Human Betterment (New York: Macmillan, 1931), pp. 3-5.

<sup>27</sup>Horatio M. Pollock conducted studies on the hereditary nature of various mental diseases throughout the 1920s and 1930s at Utica State Hospital, New York.

<sup>28</sup>Gosney and Popenoe, pp. 129-130.

<sup>29</sup>Ellsworth Huntington et al., Tomorrow's Children: The Goal of Eugenics (New York: John Wiley & Sons, Inc., 1935), p. 51.

<sup>30</sup>Paul Popenoe, "Eugenic Sterilization in California: Fecundity of the Insane," Journal of Heredity, XIX (February, 1928), p. 82.

<sup>31</sup>Gosney and Popenoe, pp. 6-7.

<sup>32</sup>Landman, Human Sterilization, p. 160.

- <sup>33</sup> A Decade of Progress in Eugenics, Scientific Papers of the Third International Congress of Eugenics (Baltimore: The Williams & Wilkins Company, 1934), pp. 218-225.
- <sup>34</sup> "Mass Sterilization for Human Betterment," Literary Digest, CXIV (August 6, 1932), p. 16.
- <sup>35</sup> J. J. Walsh, "Race Betterment," The Commonwealth, XIX (February 2, 1934), p. 341.
- <sup>36</sup> Horatio M. Pollock with Benjamin Malzberg and Raymond G. Fuller conducted studies on the hereditary nature of various mental diseases throughout the 1920s and 1930s. These researchers worked for the State Department of Mental Hygiene, Albany, New York. In their most important study presented at the Third International Congress of Eugenics in 1934, they concluded that there was no indication of hereditary transmission in the disease manic-depressive psychosis.
- <sup>37</sup> H. M. Pollock, B. Malzberg and R. G. Fuller, "Is Heredity a Causative Factor in the Manic-Depressive Psychosis?" A Decade of Progress in Eugenics. Scientific Papers of the Third International Congress of Eugenics (Baltimore: Williams & Wilkins, 1934), p. 342.
- <sup>38</sup> Michael F. Guyer, Being Well-Born (Indianapolis: Babbs-Merrill Co., 1927), p. 433.
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- <sup>40</sup> Abraham Myerson et al., Eugenical Sterilization: A Reorientation of the Problem (New York: Macmillan Co., 1936), pp. 177-183.
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- <sup>42</sup> Landman, Human Sterilization, p. 261.
- <sup>43</sup> Haven Emerson, "A New Approach to Eugenics," Journal of Heredity XXVIII (September, 1937), p. 307.
- <sup>44</sup> Journal of the American Medical Association (June 1, 1935), pp. 2000-2001.
- <sup>45</sup> Journal of the American Medical Association (May 18, 1935), p. 154.
- <sup>46</sup> New York Times (December 17, 1936), p. 1.
- <sup>47</sup> New York Times (December 27, 1936), p. 8.
- <sup>48</sup> New York Times (February 2, 1936), p. 9.
- <sup>49</sup> Landman, Human Sterilization, p. 9.

- <sup>50</sup>Frances Oswald, "Eugenical Sterilization in the United States," The American Journal of Sociology, XXXVI (July, 1930), p. 70.
- <sup>51</sup>Joseph Mayer, "Eugenics in Roman Catholic Literature," trans. Paul Popenoe. Eugenics, III (February, 1930), p. 2.
- <sup>52</sup>Paul Popenoe, "A Roman Catholic View of Sterilization," Journal of Social Hygiene, XIV (March, 1928), p. 187.
- <sup>53</sup>\_\_\_\_\_, "The Progress of Eugenic Sterilization," Journal of Heredity, XXV (January, 1934), p. 25
- <sup>54</sup>New York Times (December 24, 1933), p. 2.
- <sup>55</sup>John A. Ryan, "Futile Immorality," The Forum, XCIV (July, 1935), p. 31.
- <sup>56</sup>Ryan, "Futile Immorality," p. 31.
- <sup>57</sup>Landman, Human Sterilization, pp. 258-259.
- <sup>58</sup>Ibid., pp. 260-261.
- <sup>59</sup>Ellen C. Potter, The Problems of Women in Penal and Correctional Institutions, Proceedings of the Sixty-Third Annual Congress of the American Prison Association: Atlantic City, New Jersey, October 8-13, 1933 (New York: American Prison Association, 1933), p. 107.
- <sup>60</sup>Paul Popenoe, "Sterilization and Criminality," Reports of the American Bar Association, LIII (1928), p. 578.
- <sup>61</sup>Justin K. Fuller, "A Health Program for Prisons," Proceedings of the Sixty-Eighth Annual Congress of the American Prison Association: St. Paul, Minnesota October 2-7, 1938 (New York: American Prison Association, 1938), p. 320.
- <sup>62</sup>Harold Ward, "The Dilemma of Eugenics," The New Republic, LXXXII (April 24, 1935), p. 306.
- <sup>63</sup>Landman, Human Sterilization, p. 46.



## CHAPTER IV

### THE CRIMINAL

#### Crime as a Hereditary Disease

In the 1880s there developed in Europe a new school of social thought concerning criminals and malfactors, criminal anthropology. This school was derived from the materialism and scientism of the nineteenth century. Cesare Lombroso (1836-1909), an Italian professor of medical ethics at the University of Turin founded the theory of criminal anthropology. The basic assumption of criminal anthropology was that criminals and asocial individuals were not the result of their environment, but were the result of defective heredity. Since by the assumptions of criminal anthropology, crime was not a learned tendency, but an inherited one, the answer to crime was not environmental reform but the elimination of undesirable breeding stock from the human race. This theory spread rapidly to the United States within a decade of its development. During the 1890s criminal anthropology had a significant effect upon American attitudes. The influence of criminal anthropology was so great that, when the sterilization program got underway, hereditary criminals were among those most often mentioned as candidates for surgery.<sup>1</sup>

Criminal anthropology, due to its physical determinism was antithetical to previous theories of crime and the treatment of criminals in the United States. Before the 1890s in the United States the

reason for the imprisonment of criminals was different from the reason used after the introduction of criminal anthropology. During most of the nineteenth century in the United States law breakers were incarcerated for purpose of rehabilitation and reform; after 1890 prisons became holding pens which, by preventing the escape of criminals, protected society from the incorrigible.

The idea that criminals were not susceptible to rehabilitation caused many to consider the high cost of prisons a waste of public funds. Those who accepted the idea of the futility of prisons endeavored to find a less extravagant and more efficient solution to crime. The solution these genetic determinists arrived at, with the help of Galtonian eugenists, was sterilization. In 1875 the linkage between heredity and criminality was supported by Dugdale in his influential study of the Juke family. The genealogical study of the Jukes conducted by Dugdale established a method for many subsequent studies of degenerate families by various authors. The results of studies of the Nam family, the Hill Folk, the Piney family, the Dack family and the Happy Hickory family were similar to the results obtained by Dugdale.<sup>2</sup> These studies all demonstrated the correlation of crime with mental deficiency. Thus criminal anthropologists were the natural allies of eugenists, for they both shared a common hope for the salvation of society: sterilization of the mentally deficient and defective.<sup>3</sup>

For centuries asexualization was used as a punitive measure for criminals. Before the twentieth century the method used was castration. The disturbing side effects caused by castration made this procedure unacceptable to twentieth century social reformers and eugenists. An alternative procedure was developed late in the

nineteenth century for the sterilization of an individual with no hormonally induced side effects. In 1897 Doctors F. A. Kehrler, a German physician, and H. G. Lennander, a Swedish surgeon, independently developed surgical procedures for the sterilization of human beings, without castration.<sup>4</sup> The sterilization procedure developed by H. G. Lennander for the male was called "vasectomy", and the procedure developed for the sterilization of the female was termed "salpingectomy". With Galton's theory of selective breeding existent since the 1880s, and the development of the improved methods for sterilization, made available in the late 1890s, many social-Darwinists heralded the advent of a better bred society.

An American prison physician at the Jeffersonville Reformatory at Jeffersonville, Indiana, made the first application of vasectomy for a eugenic purpose. In 1899 the reformatory physician, Dr. Harry C. Sharp, performed a vasectomy on a nineteen-year-old inmate who had complained of the problem of masturbation and desired the prison physician to castrate him.<sup>5</sup> Sharp, however, unfamiliar with the effects of vasectomy used this procedure on the patient instead of performing the requested castration. Not long after performing this first therapeutic vasectomy, Sharp decided to use the operation for a eugenic purpose on "hereditary criminals" within the Jeffersonville reformatory. Sharp was so impressed with the results he achieved from the operations that he performed an additional 236 vasectomies on inmates of the reformatory between the years 1899 and 1912.<sup>6</sup>

Sharp performed his first sterilizations without the approval of law, but for the large scale implementation of sterilization, Sharp realized that legal sanctions would be necessary. Sharp advocated that

all interested citizens organize in order to get sterilization initiated in their community correctional and mental institutions. Sharp led the sterilization campaign in Indiana with almost religious zeal, developing the campaign into a crusade to prevent the spread of human degeneracy and delinquency.<sup>7</sup> Sharp in addressing himself to the religious and moral objections to the law, asked the rhetorical question "shall we permit idiots, imbeciles, and degenerate criminals to continue the pollution of the race simply because certain religionists teach that marriages are made in heaven and that the function of procreation is divine?"<sup>8</sup>

#### Sterilization Legislation

The first sterilization bill proposed in the state legislature of Michigan in 1897 was voted down. A similar sterilization statute was passed in the legislature of Pennsylvania in 1905; however, it was vetoed by the governor.<sup>9</sup> Largely through the efforts of Harry C. Sharp, Indiana was the first state to enact a sterilization law in 1907. There were provisions within the Indiana statute for the sterilization of confirmed criminals and individuals convicted of the crime of rape.<sup>10</sup> Sharp was so enthusiastic about the Indiana law that he advocated that other states enact similar legislation.<sup>11</sup> Despite the enthusiasm which Sharp demonstrated for the Indiana sterilization law it was not enforced to any extent, because of the opposition of the state governor. The Indiana sterilization law was declared unconstitutional in 1921, because it denied the defendant due process of law.<sup>12</sup> Another sterilization law was not enacted to replace the 1907 statute until 1927.<sup>13</sup> The statute of 1927 differed from that enacted in 1907 in that the

latter law contained no provision for the sterilization of criminals or rapists, but was directed totally toward the insane and retarded.<sup>14</sup>

During the progressive era several states passed laws for the sterilization of criminals. These laws often used very obscure and abstract language for the designation of what type of criminal was to be sterilized. Terms such as "hereditary criminal", "confirmed criminal", and "habitual criminal" were freely employed in some state sterilization laws. These terms implied a knowledge of genetics and criminal causation which did not exist at the time the laws were enacted.<sup>15</sup> Consequently, a number of state legislatures enacted laws for the sterilization of criminals which were based on false scientific principles.<sup>16</sup> Four states passed laws for the sterilization of individuals denoted as "confirmed criminals": Indiana (1907), New Jersey (1911), North Dakota (1913), and Washington (1921).<sup>17</sup> Three of these four laws were declared unconstitutional or voluntarily repealed by the state legislatures. By 1931 only the state of Washington retained its criminal sterilization law intact, but it was never used as a compulsory measure.<sup>18</sup> Nine states enacted sterilization statutes which applied to those classified as "habitual criminals": Washington (1909), Nevada (1911), New York (1912), Kansas (1917), Oregon (1923), Idaho (1925), North Dakota (1927), Nebraska (1929), and Iowa (1929).<sup>19</sup> By 1931 three of these nine states no longer had legal provisions for the sterilization of "habitual criminals". In addition, Wisconsin simply provided for the sterilization of "criminals" (1913).<sup>20</sup> Connecticut went so far as to define "hereditary criminals" in its sterilization statute of 1909.<sup>21</sup>

Both California and Oregon defined the criminal subjects of their

sterilization laws more carefully and completely than most other states. This is not to say that the sterilization provisions of the California and Oregon acts were based on more scientific grounds than other statutes. But the state of California legalized the sterilization of prisoners serving a life sentence and having one previous felony conviction, who at the time of consideration demonstrated signs of being "morally depraved."<sup>22</sup> During the progressive era the state of Iowa passed a sterilization law declaring "prostitutes", "drug fiends", and "drunkards" to be candidates for sterilization.<sup>23</sup> These laws by the 1930s, however, were either removed from the books by the state legislatures or declared unconstitutional by various courts. Before 1923 four states enacted statutes which provided for the sterilization of three-time convicted felons.<sup>24</sup> Of the five statutes passed by the four states only two states had these statutes on the books by the beginning of the 1930s, Delaware and California.<sup>25</sup> Oklahoma as late as 1931 passed a sterilization law directed specifically at "habitual criminals." The law defined a habitual criminal as one who had been convicted three times of a felonious offence.<sup>26</sup>

Sterilization statutes which were directed at "sex criminals" were among the earliest sterilization laws in existence; however, they were less numerous than provisions for criminals convicted of non-sexual offenses, the mentally diseased or defective. The most long lived of the laws for the sterilization of sex offenders were the statutes passed in New Jersey (1911) and Kansas (1917). Both of these laws designated "sex criminals" as candidates for sterilization; both of these laws remained in effect through the 1930s. The crime of rape was adequate for initiating sterilization procedures against the defendant

in eight states: Indiana (1907), Washington (1909), Nevada (1911), New Jersey (1911), New York (1912), Iowa (1913), North Dakota (1913), and Oregon (1925).<sup>27</sup> All eight of the rape provisions were dropped from the law books by the beginning of the 1930s. Laws which made the "carnal abuse of a female" an offense punishable by sterilization were enacted in Washington (1909) and Nevada (1911), but both were shortly invalidated.<sup>28</sup> The states of California and Iowa enacted between them four statutes which provided for the sterilization of two-time convicts of sex-related crimes who demonstrated evidence of depravity of character.<sup>29</sup> Of the four laws all were either replaced or declared unconstitutional by 1930 except California's 1913 law.<sup>30</sup>

During the early 1930s the trend of passing sterilization laws for criminals by state legislatures had decreased in momentum. In 1931 the state of Oklahoma enacted a law for the sterilization of incurable criminals which received concerted and negative reaction from the nation's press.<sup>31</sup> The New York Sun editorialized,

If it were an act of Congress, it certainly would be open to attack as violating the Eighth Amendment to the Federal Constitution. . . . The Oklahoma statute may come before the Supreme Court of the United States on either 'due process of law' or the 'equal protection of the laws' provisions of the Fourteenth Amendment. Valid or not, this method of dealing with criminals is likely to offend the sensibilities of a considerable portion of the public.<sup>32</sup>

#### The Eugenists: Defenders of Sterilization

The American eugenical community was divided on the issue of sterilization of criminals and social deviates. The American eugenics movement was dichotomized into pro and anti-sterilization factions because of the nature of the scientific data available on the genetics of crime. As the 1930s began the genealogical studies which had been

conducted by Dugdale and Goddard several decades earlier were no longer acceptable as scientific proofs. There had been little clinical verification of the postulated hereditary nature of crime, and some eugenists were themselves unwilling to commit themselves to such a program. These eugenists were afraid that states were using sterilization of criminals as a punitive method and demanded more research before any type of program was initiated.<sup>33</sup>

Proponents of criminal sterilization justified their call for massive programs of sterilization in several ways. The rare and most extreme group of supporters of sterilization for the criminal element used the argument of the Lombroso school of criminal anthropology. They expounded that criminality was a hereditary tendency which passed from one generation to the next in much the same manner as other known genetic diseases. The school of hereditary criminality was particularly strong in Germany during the 1930s. Popenoe was responsible for translating the summaries of several articles by German criminal anthropologists into English.<sup>34</sup> Most eugenists during the 1930s subscribed to the belief that crime was a product not of heredity, but of mental disease and inferiority. For the eugenists who blamed the problem of crime on mental abnormality, the Binet intelligence test replaced the stereotaxic instruments of the criminal anthropologist for the detection of the "criminal types."<sup>35</sup> Many of the early intelligence studies conducted in state prisons supported the findings of Goddard's and Dugdale's genealogical studies of degenerate families; intelligence is proportional to criminality.<sup>36</sup> The students of society who entered the various prisons were expecting to find enough mental retardation to support the genealogical studies; however, they did not suspect that



they would find mental inferiority in such grand proportions. Some psychological testers estimated from twenty-five per cent to ninety per cent of prison inmates suffered from feeble mindedness.<sup>37</sup> The eugenists of the 1930s accepted the findings of the early Binet testers with little alteration. Most of the significant eugenists in the United States rejected the idea of the inheritance of criminal tendencies. They accepted the principle of sterilization of the feeble minded and the insane because they were burdens on society. The eugenists considered them burdens because of the social welfare expended on them and the crimes which they might commit, but few accepted the idea of sterilization of criminals because they contained criminal germ plasm. Paul Popenoe stated that criminal behavior was not inherited and that any attempt to reduce the social problem of crime by the elimination of criminal heredity was unscientific and false.<sup>38</sup> However, the admission that criminal sterilization rested on an unsound scientific foundation did not stop some eugenists from advocating the sterilization of criminals. To these eugenists it was not important whether criminals were produced by defective germ plasm or bad environment, sterilization could still be beneficial to society because it stopped unfit individuals from having and raising children.<sup>39</sup>

Despite the agreement between most of the significant American eugenists on the lack of scientific proof for the inheritability of criminal tendencies, most agreed that sterilization should not be used as a form of punishment. Elsworth Huntington of the Human Betterment Foundation stated in his eugenic catechism Tomorrow's Children that sterilization was not a punitive measure, but strictly a protective one.<sup>40</sup> Even Popenoe was not in complete support of criminal

sterilization laws. He indicted the California sterilization laws for criminals as being unsatisfactory on scientific grounds and having little to interest biologists due to their punitive nature.<sup>41</sup> Popenoe felt that laws for the sterilization of criminals should make the reason for sterilization clear whether therapeutic, punitive, or eugenic. Popenoe never doubted the good which could be done by sterilization of criminals, but thought that the law should specify the purpose of sterilization and be able to support the reason for sterilization with adequate evidence.<sup>42</sup> Professional eugenists stressed further research into the inheritance of criminality, much as they did for the hereditary nature of feeble mindedness. But many also believed that the absence of pertinent scientific facts should not halt the implementation of sterilization laws for criminals.<sup>43</sup>

#### Scientific Objections

During the 1930s the scientific community was supported by a number of social critics in the battle against compulsory sterilization of criminals. This alliance attacked the assertion that criminality was transmitted as a hereditary disease. The anti-sterilization faction contended that crime was a social disorder which was almost totally a product of the environment. Dr. Clifford Shaw of the University of Chicago demonstrated that an important and direct correlation existed between environment and juvenile delinquency.<sup>44</sup> Social scientists involved in the study of criminality among other disorders not only concluded that the mechanism of inheritance was completely unknown, if it does indeed exist, but that environment had much more to do with the development of criminal traits in people than did genetic factors.<sup>45</sup>

The Myerson committee of the American Neurological Association conducted a survey of some of the literature written on the hereditary nature of crime for its report in 1935.<sup>46</sup> The Myerson committee concurred with the majority of the scientific community, that there was inadequate scientific proof of the link between heredity and criminality.<sup>47</sup> Edwin Grant Conklin, the president of the American Association for the Advancement of Science and a Professor of Biology at Princeton University, termed the American sterilization laws for the criminals as factually unjust products of "modern crusaders." Conklin observed that the sterilization of criminals would probably have no effect on the rate of crime, contemporarily or in the future; it would only be effective in elimination of excessive human population of the world.<sup>48</sup> The respected biologist from Harvard University H. M. Parshley, who for the most part was a defender of selective sterilization of the socially unfit, made it very clear that only the feeble minded and the insane should be made subjects of state sterilization laws, to assure that the operation would not be confused with a punitive measure.<sup>49</sup> Conklin designated that the only social conditions which were adequately proven to be hereditary were feeble mindedness and insanity; therefore persons who suffered from those disorders could be recommended for sterilization on firm scientific grounds. Parshley feared as did Popenoe and most moderate eugenicists that the sterilization of criminals would be confused with punitive castration.<sup>50</sup> The fear had a basis in fact because during the progressive era seven states initiated sterilization statutes which were clearly punitive in motivation.<sup>51</sup> Others of more subtle wording could easily be classified as punitive in motivation, such as the Oklahoma statute of 1931. Harold Ward, a noted critic of

the sterilization movement, believed that eugenics and in particular criminal sterilization, through its neglect of the economic contradictions of modern society, was transformed from a curative or preventative method into a palliative weapon.<sup>52</sup>

The genealogical method of studying social problems suspected of being transmitted genetically lost favor with most scientists by the 1920s. The substitute for the family tree method of genetical analysis was laboratory experimentation. Because the correlation drawn by some eugenists between crime and heredity was based on inadequate scientific study, the sterilization of criminals was the first sterilization program to be repudiated by American scientists. Some members of the profession surrendered the principle of criminal sterilization in order to preserve other portions of the sterilization program. Some dedicated eugenists abandoned sterilization of criminals because they realized that the criminal and asocial elements of society could be sterilized under the laws for the feeble minded, or insane.

#### Medical Reaction

During the late nineteenth and early twentieth centuries criminal anthropology had a substantial influence upon the American medical profession. The hereditarian arguments of criminal anthropologists attracted many American physicians, and as a result a substantial part of the medical community lent its prestige to the campaign for the sterilization of criminals in the various states.<sup>53</sup> The early 1930s was a period of varying opinions within the medical profession over the issue of the sterilization of criminals. A faction of the medical community was very cautious about the implementation of compulsory sterilization

for the socially unfit, because of inadequate scientific knowledge of genetic mechanisms. The Belgian correspondent to the Journal of the American Medical Association who held this view of sterilization for the retarded and physical defectives did not object to the compulsory sterilization of criminals: "From the practical point of view, it would seem that one should reserve sterilization for imbeciles and criminals by constitution and recommend birth control measures for other defective persons."<sup>54</sup> In that same year, 1933, and in the same periodical another contributor saw the primary elements of society to be sterilized were the insane and the mentally retarded. Part of the explanation offered for these individuals being so dangerous to society was that they required inordinate amounts of money to institutionalize and they often became criminals which cost society even more.<sup>55</sup> The majority of physicians were cautious about the sterilization of individuals whose heredity was in doubt, the criminal element. The sterilization of persons suffering from disorders such as insanity and feeble mindedness were occasionally endorsed by American physicians, but such approval of the sterilization of criminals was very rare. Most physicians in discussions of sterilization, continually reiterated that caution must be maintained regarding the overstepping of scientific theory in sterilization programs.<sup>56</sup>

The medical profession showed little enthusiasm for the German sterilization law for criminals in the pages of the preeminent medical journals. One contributor to the Journal of the American Medical Association said of the German criminal sterilization law, "some of the provisions have a medical interest."<sup>57</sup> The general lack of enthusiasm for and endorsement of sterilization laws for the criminal elements was

embodied in the Myerson committee report to the American Neurological Association. The Myerson report expressed a view of criminal sterilization laws not unlike that held by the scientific community. The report rejected the sterilization of criminals due to insufficient scientific evidence that crime was a hereditary trait. Instead of sterilization for criminals the Myerson committee suggested social reform, as a means of reducing crime.<sup>58</sup> Myerson continued to stress the premature nature of state sterilization laws for the criminal by completely denying any connection between crime and heredity in a letter to the editor in the New York Times.<sup>59</sup> The medical community emerged from the early 1930s in a state of opinion which rejected the principle of the sterilization of criminals and closely paralleled the sentiments of the scientific community.

#### Ecclesiastical Reaction

The sterilization of criminals was not the most important portion of the Catholic Church's fight against sterilization laws, but the issue was not ignored by the Church. Before the issuing of the papal encyclical, Casti Conubii the faction of the Church which supported selected sterilization did take the issue of the sterilization of criminals to the press. This school of theological thought headed by Joseph Mayer, the well-known German theologian of moral issues, justified the sterilization of criminals by the precedent established in the writings of St. Thomas Aquinas. Thomas Aquinas had advocated the castration of criminals rather than imprisonment as means of reducing criminality in society.<sup>60</sup> The Catholic social scientist Ruland was engaged in the study of contemporary sexual needs, as seen in the activities of

criminal stocks during the 1920s and 1930s.<sup>61</sup> With the promulgation of Casti Conubii in 1931, the position of the Catholic Church was established for all types of sterilization. The principal Catholic attack on the American sterilization movement was directed at the lack of scientific basis for the sterilization of criminals. Dr. John A. Ryan, the foremost Catholic opponent of the sterilization movement during the 1930s described the sterilization laws which assumed that criminality was hereditary as ridiculous and praised the fact that only a few had been allowed to go into effect.<sup>62</sup>

#### Legal Reaction

The legal community always rejected the idea of the sterilization of criminals, mainly because of the lack of scientific evidence that criminality was a genetic disease. This idea was present in law journals even during the progressive era. An anonymous contributor to the Harvard Law Review in 1912 stated:

Therefore mere conviction of crime is insufficient to justify society in taking this drastic means of protecting itself against the criminal. Asexualization can only be justified in the case of born criminals, and unfortunately in the present state of scientific knowledge it seems impossible to distinguish most born criminals from criminals by acquired habit.<sup>83</sup>

Discussions of laws for the sterilization of criminals were numerous in American legal journals during and after the progressive era.<sup>64</sup> However, lawyers' opinions of the sterilization of criminals evolved little during the first four decades of the twentieth century. In discussing a test in the Oklahoma Supreme Court of the Oklahoma sterilization law for habitual criminals in 1935, an analyst of the Harvard Law Review commented,

Without reference to any legal or medical authority, the court chose to ignore established biological opinion that it is still impossible to reach valid generalizations concerning the heritability of criminal tendencies. . . . Despite the court's assertion that habitual criminals possess heritable traits of insanity, it seems settled that a criminal trait as such cannot be inherited.<sup>65</sup>

The attitudes of various lower courts were not reflective of the general community of lawyers. Following the Supreme Court decision of Buck v. Bell the dedication of that court to compulsory eugenic sterilization was readily detectable.<sup>66</sup> Several lower courts shared the resolve of the United States Supreme Court in the sterilization of the unfit. Specifically those judges from the lower courts were in favor of the sterilization of lawbreakers. A radical judge of New York City's Children's Court 137, Samuel D. Levy, advocated the sterilization not of juvenile offenders, but of their parents. Levy thought that such eugenic sterilizations would assure an end of the criminal element in society. Levy further advocated the use of mass sterilization by claiming that "There are 20,000 persons sterilized in this country so far, and if this process were carried out for the people who need it the number would run into the millions."<sup>67</sup> Justice Jacob Panken also of the New York City's Children's Court System stated that, in the case of sex offenders, sterilization was sometimes warranted. Panken, however, urged sterilization as an alternative to segregation for life, which would also stop the reproduction of criminals.<sup>68</sup> Although the tone of judicial demands for some type of sterilization procedure for criminals became more moderate as the 1930s progressed, the demands for sterilization were still based on the out-dated assumptions that criminality was a hereditary trait or the belief that sterilization should be a punitive measure. Jurists who favored the sterilization of criminals seldom



expressed their ideas in legal journals, but usually turned to either newspapers or popular periodicals.

#### Reaction of Institutional Administrators

The most avid defenders of sterilization laws for criminals were members of that profession which were in close daily contact with the anti-social members of society, prison and corrections institution directors. These institutional administrators valued sterilization as a normal method of dealing with the criminal element of society. In the middle 1920s, when sociologists and biologists had become less enthusiastic about eugenic reform, the editors and contributors to journals such as American Charities and Social Work continued to employ Galtonian methods to analyze problems of human degeneration.<sup>69</sup> The position of most penologists was represented in the opinion of Blanche Miller when she stated at the fifty-seventh annual congress of the American Prison Association that "the most direct methods for the material elimination of crime are sterilization of the biologically unfit and habitual criminal."<sup>70</sup> During the 1920s and 1930s the opinions of most prison experts had changed little on the issue of criminal sterilization and the hereditary nature of criminal behavior. Despite the fact that low intelligence had been discredited as being one of the symptoms of a criminal constitution by Popenoe and others, most penologists continued to equate criminality with mental retardation.<sup>71</sup> H. L. Mencken of the American Mercury as late as 1937 indicated the presence of biological determinism, in regard to crime, in prison and corrections workers. Mencken stated that wardens, police administrators, mental hygienists, truant officers, and other similar experts agreed that it would be

beneficial if the statistical differences (meaning intelligence scores) could be reduced between the criminal and the non criminal or the fit and the unfit.<sup>72</sup>

Prison officials were frequently plagued by inadequate institutional budgets and looked to sterilization as a means of partial economic relief. Prison administrators reasoned that their budgets would be adequate to meet the needs of the institution if prisons were used as facilities for dangerous anti-social criminals, and not as institutions for the mentally and socially inadequate. Ellen C. Potter, a women's prison administrator asked which served society more, the furnishing of good obstetrical care for a mother in prison, or control of the propagation of the "unfit". In her discussion, Potter did not fail to mention the increasing cost to the tax payer of incarceration of the non-dangerous criminal.<sup>73</sup>

The tax burden was a constant argument used by sterilization advocates to initiate sterilization of inmates of penal institutions before paroling them. The criminal parole system was seen by some to have failed in its purpose of rehabilitation of mentally deficient criminals. These criminals after parole were free to marry and to reproduce their kind.<sup>74</sup> Sterilization of criminals was seen by many to be a necessary and valuable adjunct to the parole system which would eliminate from society an increasing social welfare expenditure and a declining national standard.<sup>75</sup>

## Overview

Most American state laws for the sterilization of criminals were enacted during the progressive era and were distinct products of that movement. These laws were intended for various purposes, eugenic, therapeutic, and punitive. The movement to sterilize criminals did not have the full support of the American human sterilization movement in its campaign for state laws. The movement for criminal sterilization never had the support among eugenicists and professionals that other sterilization campaigns enjoyed. The major reason for lack of support of the movement for the sterilization of criminals was the lack of scientific facts to prove the assertions of the advocates of the sterilization of criminals. Because of the lack of correlation between genetics and crime, American social scientists, psychologists, and biologists withdrew their support from the movement. The school of criminal anthropology was unable to detect a universally acceptable set of characteristics which were common to the criminal element. Thus the movement began to fade. The movement for laws for the sterilization of criminals suffered from lack of professional and eugenic support throughout the 1910s and 1920s and entered the 1930s in a very weak state. Despite the lack of support by the professions for the sterilization of criminals there were groups which did support the movement. Institutional administrators saw sterilization of criminals coupled with parole as a method to ameliorate their economic situation. There were also occasional pockets of popular support for the sterilization of criminals. In 1934 the Women's Advisory Board to the mayor and aldermen of Savannah, Georgia, passed a resolution to suggest that a

state law for the sterilization of criminals be passed.<sup>76</sup> As late as 1937 a Fortune magazine random survey found that sixty-three per cent of the people polled were in favor of the sterilization of habitual criminals.<sup>77</sup> Despite isolated pockets of popular support for the movement for the sterilization of criminals, the movement lacked the support of most professions, the Catholic Church, and part of the human sterilization movement. This lack of support cost the movement much of its vitality in the 1930s.

#### FOOTNOTES

<sup>1</sup>Mark Hughlin Haller, Eugenics: Hereditarian Attitudes in America Thought (New Brunswick, N.J.: Rutgers University Press, 1963), p. 47.

<sup>2</sup>All of the degenerate families studied were of similar background, they were residents of rural areas with sparse population and thus had a high incidence of intermarriage. The Nam family were the product of a marriage between an eighteenth century immigrant and Indian princess, and resided in western Massachusetts. The Hill Folk also lived in western Massachusetts and heavily interbred with the Nam family. The Piney family was composed of several degenerate heavily interbred clans who lived in the pine barrens of New Jersey. The Dack family descended from the worthless and immoral offspring of Irish immigrants in western Pennsylvania. The Happy Hickory family resided in rural Ohio, and was remarkable for its many generations of feeble-minded descendants.

<sup>3</sup>Samuel J. Holmes, Human Genetics and Its Social Imports (New York: McGraw-Hill Book Co., Inc., 1936), pp. 183-186.

<sup>4</sup>Paul Popenoe, "The Progress of Eugenic Sterilization," Journal of Heredity, XXV (January, 1934), p. 19.

<sup>5</sup>Haller, Eugenics, p. 49.

<sup>6</sup>Donald K. Pickens, Eugenics and the Progressives (Nashville: Vanderbilt University Press, 1968), p. 87.

<sup>7</sup>Haller, Eugenics, p. 49.

<sup>8</sup>Ibid., p. 50.

<sup>9</sup>Abraham Myerson et al., Eugenical Sterilization: A Reorientation of the Problem (New York: Macmillan Co., 1936), p. 4.

<sup>10</sup>Laws of the State of Indiana, 1907, Chapter 215.

<sup>11</sup>Haller, Eugenics, p. 50.

<sup>12</sup>J. H. Landman, Human Sterilization: The History of the Sexual Sterilization Movement (New York: Macmillan Co., 1932), pp. 304-305.

<sup>13</sup>Laws of the States of Indiana, 1927, Chapter 241.

<sup>14</sup>Ibid.

- <sup>15</sup>Landman, Human Sterilization, p. 258.
- <sup>16</sup>Ibid., pp. 260-261.
- <sup>17</sup>Laws of the State of Indiana, 1907, Chapter 215; Acts of New Jersey, 1911, Chapter 190, Laws of North Dakota, 1913, Chapter 56; Session Laws of Washington, 1921, Chapter 53.
- <sup>18</sup>Landman, Human Sterilization, pp. 56-57.
- <sup>19</sup>Session Laws of Washington, 1909, Criminal Code Section 35; Revised Laws of Nevada, Vol. II, Crimes and Punishments, Paragraph 6293, Section 28; Laws of New York, 1912 Chapter 445, Art. 19; Kansas Session Laws, 1917, Chapter 299; General Laws of Oregon, 1923, Chapter 194; General Laws of Idaho, 1925, Chapter 194; Laws of North Dakota, 1927, Chapter 263; Session Laws of Nebraska, 1929, Chapter 163; Acts and Resolutions of Iowa, 1929, H.F. 243.
- <sup>20</sup>Wisconsin Session Laws, 1913, Chapter 693.
- <sup>21</sup>Public Acts of Connecticut, 1909, Chapter 209.
- <sup>22</sup>Statutes of California, 1909, Chapter 720 and 1913, Chapter 363.
- <sup>23</sup>Acts and Joint Resolutions of Iowa, 1911, Chapter 129 and 1913, Chapter 187.
- <sup>24</sup>Landman, Human Sterilization, pp. 304-305.
- <sup>25</sup>Ibid.
- <sup>26</sup>Session Laws of Oklahoma, 1931, Chapter 26, Article 3.
- <sup>27</sup>Laws of the State of Indiana, 1907, Chapter 215; Session Laws of Washington, 1909, Criminal Code, Section 35; Revised Laws of Nevada, 1912, Vol. II, Crimes and Punishments, Paragraph 6293, Section 28; Acts of New Jersey, 1911, Chapter 190; Laws of New York, 1912, Chapter 445, Article 19. Acts and Joint Resolutions of Iowa, 1913 Chapter 187; Laws of North Dakota, 1913, Chapter 263; General Laws of Oregon, 1923, Chapter 194.
- <sup>28</sup>Session Laws of Washington, 1909, Criminal Code, Section 35; Revised Laws of Nevada, 1912, Vol. II, Crimes and Punishments, Paragraph 6293, Section 28.
- <sup>29</sup>Statutes of the Laws of California, 1909, Chapter 720 and 1913, Chapter 363; Acts and Joint Resolutions of Iowa, 1911, Chapter 129 and 1913, Chapter 187.
- <sup>30</sup>Landman, Human Sterilization, pp. 304-305.
- <sup>31</sup>"Sterilization of Criminals," The Literary Digest, CIX (May 23, 1931), p. 20.

- <sup>32</sup>Ibid. Citing the New York Sun (no date given).
- <sup>33</sup>Ezra S. Gosney and Paul Popenoe, Sterilization for Human Betterment (New York: Macmillan, 1931), p. 69.
- <sup>34</sup>Paul Popenoe, "Twins and Criminals," Journal of Heredity, XXVII (October, 1936), p. 390.
- <sup>35</sup>Haller, Eugenics, p. 115.
- <sup>36</sup>Samuel J. Holmes, The Eugenic Predicament (New York: Harcourt, Brace & Co., 1933), p. 113.
- <sup>37</sup>Haller, Eugenics, pp. 100-102.
- <sup>38</sup>Paul Popenoe, "Sterilization and Criminality," Reports of the American Bar Association, LIII (1928), p. 577.
- <sup>39</sup>Ibid., pp. 579-580.
- <sup>40</sup>Ellsworth Huntington et al., Tomorrow's Children: The Goal of Eugenics (New York: John Wiley & Sons, Inc., 1935), p. 51.
- <sup>41</sup>Popenoe, "Sterilization and Criminality," p. 577.
- <sup>42</sup>Ibid., pp. 579-580.
- <sup>43</sup>A. M. Turano, "Sterilization of the Unfit," The Forum, XCI (February, 1934), p. 124.
- <sup>44</sup>D. M. Le Bourdais, "Purifying the Human Race," North American Review, CCXXXVIII (November, 1934), p. 434.
- <sup>45</sup>Ibid.
- <sup>46</sup>Myerson, Eugenical Sterilization, p. 201.
- <sup>47</sup>Ibid., p. 151.
- <sup>48</sup>Edwin Grant Conklin, Heredity and Environment: In the Development of Men. 6th ed. (Princeton: Princeton University Press, 1930), p. 310.
- <sup>49</sup>H. M. Parshley, "Eugenics, 1932," The Nation, CXXIV (May 18, 1932), p. 570.
- <sup>50</sup>Ibid., p. 369.
- <sup>51</sup>Landman, Human Sterilization, pp. 302-303.
- <sup>52</sup>Harold Ward, "The Dilemma of Eugenics," The New Republic, LXXXII (April 24, 1935), pp. 304-306.

- <sup>53</sup>Haller, Eugenics, pp. 46-47.
- <sup>54</sup>Journal of the American Medical Association (January 21, 1933), p. 204.
- <sup>55</sup>Journal of the American Medical Association (April 1, 1933), p. 1050.
- <sup>56</sup>Journal of the American Medical Association (June 1, 1935), pp. 2000-2001.
- <sup>57</sup>Journal of the American Medical Association (February 24, 1934), p. 631.
- <sup>58</sup>Myerson, Eugenical Sterilization, p. 152.
- <sup>59</sup>New York Times (February 2, 1936), p. 1.
- <sup>60</sup>Paul Popenoe, "A Roman Catholic View of Sterilization," Journal of Social Hygiene, XIV (March, 1928), p. 187.
- <sup>61</sup>Joseph Mayer, "Eugenics in Roman Catholic Literature," trans. Paul Popenoe. Eugenics, III (February, 1930), p. 6.
- <sup>62</sup>John A. Ryan, "Futile Immorality," The Forum, XCIV (July, 1935), p. 29.
- <sup>63</sup>Harvard Law Review, XXVI (December, 1912), p. 164.
- <sup>64</sup>Mildred Rossman, "Heredity Again Recognized by Law," Journal of Heredity, XXII (February, 1931), pp. 88-90.
- <sup>65</sup>Harvard Law Review, LV (December, 1941), pp. 285-286.
- <sup>66</sup>47 Supreme Court Report, 584, 274 U. S. 200.
- <sup>67</sup>New York Times (November 11, 1934), p. 2
- <sup>68</sup>New York Times (August 25, 1937), p. 3.
- <sup>69</sup>Pickens, Eugenics and the Progressives, p. 204.
- <sup>70</sup>Proceedings of the Fifty-Seventh Annual Congress of the American Prison Association: Tacoma, Washington, August 12-18, 1927 (New York: American Prison Association, 1927), p. 153.
- <sup>71</sup>Popenoe, "Sterilization and Criminality," p. 578.
- <sup>72</sup>H. L. Mencken, "Utopia by Sterilization," The American Mercury XLI (August, 1937), p. 400.



<sup>73</sup>Ellen C. Potter, The Problems of Women in Penal and Correctional Institutions. Proceedings of the Sixty-Third Annual Congress of the American Prison Association: Atlantic City, New Jersey, October 8-13, 1933 (New York: American Prison Association, 1933), p. 107.

<sup>74</sup>Turano, p. 122.

<sup>75</sup>K. B. Aikman, "Multiplications of the Less Fit," Edinburgh Review, CCL (July, 1929), pp. 90-91.

<sup>76</sup>New York Times (February 3, 1934), p. 9.

<sup>77</sup>"Fortune Quaterterly Survey IX," Fortune, XVI (July, 1937), p. 106.

## CHAPTER V

### CONCLUSION

American sterilization legislation was transformed during the twentieth century in response to various pressures. The sterilization statutes passed by the states during the progressive era were extremely zealous in nature. American sterilization laws were expedient in nature because sterilization advocates were convinced that they alone possessed the insight necessary to preserve the integrity of the human race, and they were able to convince legislators of their special knowledge. These sterilization laws were passed in a period during which some social theorists warned that the unfit and undesirable members of society were about to overwhelm the American population. The panic initiated by these fearful predictions caused legislators to enact stop-gap measures which were founded on little scientific information. These laws were drawn up with little consideration of possible conflicts with the federal constitution. Following the First World War some states enacted their first sterilization statutes while states which already had such laws qualified or replaced these statutes. The modifications were made in response to legal pressure placed on the structure of the laws by various state and federal courts. During the years 1913-1918 six sterilization laws were declared unconstitutional because they violated various portions of the constitution. Despite increasing knowledge concerning the inheritance of insanity and feeble mindedness,

legal pressures caused the laws to change, not the pressures of increasing scientific data. The Virginia sterilization law passed in 1924 established a pattern for other states to follow in the drafting of sterilization statutes. The Virginia law also revitalized the application of such laws in the United States. The Virginia law was the first sterilization law to be adjudicated before the United States Supreme Court; therefore this piece of legislation served as a barometer of high court opinion on the matter of sterilization of the unfit. The Supreme Court's decision that the Virginia statute of 1924 was constitutional, and that the state had the right to sterilize a feeble-minded girl named Carrie Buck, served as a catalyst in the formulation of sterilization programs by other states.

The legislators of the various states were sensitive to legal pressures, as indicated by the careful legal wording of most of the state statutes which were drawn up after the Buck v. Bell decision was made in 1927. The same legislators, however, were out of touch with scientific advancements which had been made since the first sterilization law was passed in 1907. The sterilization statutes were based on scientific theory which was either antiquated or erroneous. This absence of contemporary scientific theory was in large part due to the advisors selected by legislators. For expert technical advice, many legislators turned to the eugenicists instead of scientists or in particular geneticists. The eugenicists themselves relied upon the social and scientific theories developed during the progressive era, the golden age of eugenics. This unfortunate choice of advisors by legislators caused several states to enact laws based more upon class and economic prejudices than the recent findings of genetics. As the 1930s began in the

United States almost thirty states had enacted sterilization laws, the vast majority of these laws were based on out-dated scientific principles. The case of Buck v. Bell, the enactment of sterilization laws in foreign countries and provinces, and the economic collapse of 1929 brought about the mass application of scientifically unsound sterilization legislation in the United States.

Eugenists were instrumental in getting sterilization laws passed in the various states. Their influence with the state legislators did much to form the sterilization statutes. Eugenists changed their arguments for the sterilization of the "unfit" little throughout the first half of the twentieth century. They used the results of early Binet tests and the genealogical studies of the well-known degenerate families such as the Kalikaks and Jukes to demonstrate the epidemic proportions which the unfit and undesirable had reached in the American population. Eugenists, even those who were scientists by profession such as Samuel J. Holmes, maintained that feeble mindedness and insanity were transmitted as simple Mendelian traits. The doctrine of the eugenists was also founded upon the assumption that enough was known about the transmission and causes of mental deficiency and disorder that it was feasible and acceptable to eliminate these defective strains by compulsory sterilization. These often erroneous assumptions launched eugenists on a sterilization campaign to the public which promised the swift elimination of defective strains from the race. A few members of the American sterilization movement recognized the inconsistency between data collected on the heredity of the insane, retarded, and anti-social and the theory of simple Mendelian inheritance. These advocates were not disheartened by the lack of knowledge about the exact

nature of inheritance and advised a continuation of sterilization, because the people being sterilized under the state laws were not fit to be parents, whatever the mechanism of inheritance of their disorders. Eugenists throughout the 1930s either did not accept the more recent findings of the science of genetics, or they accepted the new scientific data as being extensive enough to justify a mass compulsory campaign.

Sterilization advocates during the 1930s continued to call for the sterilization of the feeble minded and insane; however there was some reorientation of their position on the sterilization of criminals. Paul Popenoe was one of the prominent members of a group of pro-sterilization eugenists who repudiated the sterilization of criminals when based on their inferior inheritance. These eugenists felt that inadequate scientific evidence existed to show that criminality was an inherited trait, and thus sterilization laws which provided for the sterilization of criminals for eugenic reasons were unscientific. Despite the repudiation of criminal sterilization laws which claimed to rest on eugenic principles, the practice of sterilization of felons was approved by most sterilization advocates. Some eugenists advocated the sterilization of criminals because in their opinion these persons were not fit to be parents and would likely lead their children into a worthless and shiftless life of crime. Many eugenists recognized the viability of the theory that environment was the cause of crime, not germ plasm. It was only in the late 1920s and 1930s that the Lombroso theory of criminal anthropology began to lose favor, and the theorists who attributed crime to environment began to replace the hereditarians. The eugenists, however, did not give up their support in the prison administrations of the country. They produced studies which linked crime to mental

retardation and insanity. The eugenists' campaign to stop crime turned from the sterilization of felons to the sterilization of the mentally diseased and defective, in and out of prisons. Sterilization advocates reacted only against the argument that crime was an inherited characteristic, not against the sterilization of criminals if the justification for sterilization was scientific.

The churches in the United States also were involved in the argument over the sterilization of the unfit and unwanted. One church in particular, the Roman Catholic Church, provided the only organized resistance to the sterilization movement in the United States. Before the 1930s the Church offered little firm resistance to the sterilization movement. The principle of sterilization was accepted by most Catholic theologians to be a violation of the basic tenets of the Church. However, various members of the Catholic high clergy in the United States did not oppose sterilization until a papal edict was issued in 1931. The papal encyclical Casti Conubii confirmed and made official Church opposition to the practice of sterilization as well as birth control. Rome condemned sterilization as interference with a God-given gift, procreation; and furthermore sterilization, like birth control, made the act of coitus separate from the act of reproduction, which constituted a sin. After the issuance of Casti Conubii the Catholic clergy and large numbers of the laity opposed the state sterilization laws in the United States. As the 1930s progressed the arguments against sterilization became more elaborate. Most of these arguments could be condensed to the objection that sterilization completely ignored the holy or spiritual aspects of man and degraded him to the status of a dumb beast. Catholic opposition to sterilization in the United States was partially

attributable to the initiation of a large scale sterilization program in Germany. The opposition of the Catholic Church to sterilization in the United States should not be underemphasized, for the Church could call upon every Catholic professional in medicine, law, science and social work to refrain from the advancement of the cause of sterilization in any way. By employing force of conscience the Catholic Church was able to prevent a sizable portion of professionals from participating in sterilization programs, professionals who were needed to assure the success of these measures.

While portions of the professions were in part limited in their support of sterilization measures because of reasons of conscience, many professionals were in opposition to mass sterilization programs for other reasons. The scientific ignorance of state legislators who were responsible for the enactment of sterilization statutes alienated a number of scientists and physicians. The disregard by legislators of scientific considerations caused many scientists to leave the sterilization and eugenic movement from World War I throughout the 1930s.

The principal objection of geneticists and scientists to the sterilization movement was that it was based on oversimplified or pseudo-scientific doctrines. The greatest objection which the scientific community reiterated against the sterilization movement was that the laws did not reflect the level of knowledge which science possessed about the hereditary transmission of disorders and deficiencies of the human mind. Prominent men of science such as J. B. S. Haldane, H. S. Jennings, and the American geneticist and Nobel Prize winner H. J. Müller openly condemned the sterilization movement for operating on principles not yet established by science. The geneticists, and some eugenicists

urged the abandonment of sterilization as a eugenic method, because it was based on scientific ignorance, not knowledge. A minority of scientists, such as Howard M. Parshley, used the argument of sterilization advocates in regard to crime, that those people normally sterilized under the state laws would be unfit parents if they were allowed to have children. The majority of scientists were in avid opposition to the sterilization laws of the United States and frequently spoke out against the premature nature of these statutes. The objections of scientists to sterilization laws were used repeatedly by almost every opponent of sterilization regardless of profession or expertise. The objection to sterilization on scientific grounds formed as large a part of the Catholic argument against sterilization as did moral and theological issues.

Not only were physical and biological scientists in opposition to the sterilization movement, but so were numerous social scientists. Social scientists had begun to doubt the reliability of the Binet test in estimation of mental deficiency. The struggle between those who believed in the environmental cause of insanity and criminality and those who thought that such disorders were hereditary, had begun to favor the former group. The assumptions on which criminal anthropology were based began to be disproven in the 1920s and 1930s by social scientists. This development brought about a mass desertion of the sterilization movement by social scientists.

The medical profession was divided on the matter of compulsory sterilization of the unfit. A number of the most active members of the American sterilization movement were physicians. Physicians sat on almost all state eugenics boards, and some physicians, such as Haven



Emerson, thought that the physician alone was competent to make the decision on eugenic sterilization. Some physicians were opposed to eugenic sterilization on the grounds that not enough scientific data had been collected to justify the practice. Despite considerable opposition to the practice of sterilization in the United States, there was interest in the profession regarding the German sterilization law. The American Medical Association was not disinterested or indifferent to the issue of compulsory sterilization of the unfit; however, they were too conservative to support sterilization programs in the 1930s, because of a lack of scientific support. The medical profession while closely watching the progress in human genetics before actively denouncing or endorsing the principle of eugenic sterilization, did take a negative stand on the sterilization of criminals. The matter of sterilizing criminals because of bad heredity was seldom discussed in the medical journals; but when such articles or editorials appeared, they were almost without exception negative in attitude. The medical profession's arguments were similar to those used by the scientific profession for withholding support from the American sterilization movement. Both professions condemned existent sterilization laws because they were neither drafted nor executed with sound scientific principles in mind.

The legal profession was divided in their opinion of the United States sterilization laws. After 1927 it was clear that the United States Supreme Court supported state sterilization statutes. During the 1930s the majority of American lawyers, however, regarded sterilization dispassionately. The issue of sterilization of the unfit was debated far more actively in the law journals during the 1910s and 1920s than in the 1930s. Lawyers in the 1930s had come to an acceptance of

sterilization as long as the practice was eugenic in nature and practice. Many attorneys rejected the sterilization of criminals for any reason. The inability of sterilization advocates to demonstrate that crime and criminals were the result of bad germ plasm left many lawyers uneasy about applying laws which depended upon scientific assumptions that science could not support. Several state legislatures demonstrated themselves to be insensitive to the feelings of the mass of the legal profession, by enacting laws for the sterilization of criminals. Lawyers regarded any act which prescribed sterilization and which was not based solidly upon sound scientific findings to be a punitive measure. The Oklahoma criminal sterilization act of 1935 was regarded in most legal journals as a punitive measure and therefore a violation of the constitution's provision forbidding cruel and unusual punishment. While the lawyers of the country rejected the sterilization of criminals using the argument of the scientists and medical men, they accepted more readily than either of the other professions laws which provided for the sterilization of the feeble minded and insane. The acceptance of the laws for the sterilization of the mentally retarded and the mentally diseased was due to the relatively sounder scientific principles which underlay these laws.

Many of the founding principles of the American sterilization movement were derived from the Lombroso school of criminal anthropology. Persons involved in corrections work after the 1880s were thoroughly familiar with the idea of a criminal type and the hereditary nature of social traits. The idea of the hereditary criminal died very slowly with penologists and institutional administrators. Institutional administrators, whether penal or charitable, looked to the earlier

solution offered by eugenisists: sterilization. To reform the environment or the individual nature took time, money and facilities. To sterilize the anti-social element of society required relatively little time and money. Prison administrators turned with few exceptions to the scalpel to solve their problems. Sterilization of criminals or dependants in theory allowed their release from custody without the fear that they might bring children into the world who would be defective like themselves. To the institutional administrator, the act of sterilization was viewed as a means of making their jobs possible with the limited budgets they generally were appropriated. Prison and charities managers responded with more sensitivity to economic pressures than to pressures from the scientific community and other professional communities.

When, in the 1930s, general opinion had abandoned the idea that criminal tendencies were inherited, prison administrators remained loyal to the hereditarian contention of the eugenists. Some eugenists using data of the early Binet testers insisted that criminality only appeared as a hereditary trait because low mentality and insanity were responsible for most criminal activity. It was possible for penologists to remain loyal to sterilization; if crime was a result of low intelligence or insanity, it was possible to eliminate it. Prison administrators throughout the 1930s remained loyal to the sterilization laws for the insane whether they believed that criminal tendencies themselves were inherited or that crime was a product of hereditary mental disorders or diseases.

The sterilization movement like the eugenics movement as a whole was a movement of the experts and professionals. During the course of

the first half of the twentieth century more and more professionals and experts lost enthusiasm for the movement and dropped out. The desertion of the sterilization movement by many professionals was mostly due to the widening gap between the science taught by eugenicists and that espoused by scientists and geneticists. Most of the professions completely abandoned the idea that criminality was an inherited trait and thus abandoned the criminal sterilization movement. The movements for the sterilization of the mentally diseased or disordered were neither repudiated nor supported by the medical, legal and scientific professions. These professions were constantly vigilant for information which might convince them of the value or worthlessness of sterilization as a social tool. Scientists were most active in calling attention to the baselessness of the sterilization movement as it existed in the first four decades of the twentieth century. Neither the medical, legal, nor scientific profession unconditionally supported sterilization as it existed in the 1930s. They hoped that future research would enlighten society concerning the proper uses of sterilization. Only the administrators of prisons and charitable institutions supported sterilization without reservation. This support was primarily due to economic pressures which these administrators thought sterilization could relieve. The compulsory sterilization movement in the 1930s was continually losing support from its main constituency, the professionals. These losses cost the revitalized sterilization movement of the early 1930s much of its strength. By the beginning of the 1940s sterilization was almost totally voluntary.

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VITA<sup>2</sup>

Michael E. Holland

Candidate for the Degree of

Master of Arts

Thesis: PROFESSIONAL RESPONSE TO THE AMERICAN STERILIZATION MOVEMENT  
DURING THE 1930s

Major Field: History

Biographical:

Personal Data: Born in Oklahoma City, Oklahoma, August 8, 1954,  
the son of Michael Ray and Dorothy Brotherton Holland.

Education: Graduated from Classen High School, Oklahoma City,  
Oklahoma, May, 1972; received the Bachelor of Science degree  
from Oklahoma State University, Stillwater, Oklahoma, with  
a major in Physiology, May, 1976; completed requirements for  
the Master of Arts degree at Oklahoma State University in  
July, 1978.

Professional Experience: Graduate teaching assistant, Department  
of History, Oklahoma State University, Stillwater, 1977-1978.

Societies: American Association for the Advancement of Slavic  
Studies, Phi Alpha Theta.