STERILIZATION AND PUBLIC POLICY

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Human Sterilization

Sterilization of human beings is a surgical operation which deprives a man or woman of the ability to procreate. Unlike castration it in no way desexes the individual, nor does it preclude participation in sexual intercourse. Its one indubitable physiological effect is to prevent the conception of children. Various sterilizing techniques have been developed by medical science, but those most commonly employed are salpingectomy for the female, and vasectomy for the male. Salpingectomy prevents conception by cutting or tying the Fallopian tubes between the ovaries and the womb. Vasectomy is an even simpler operation, which by ligating and resecting a small portion of the vas deferens, cuts off a portion of the seminal fluid and renders it sterile. Reversal is a theoretical possibility, but in practice it cannot always be brought about.[1] Other methods of sterilization such as oophorectomy (removal of the ovaries), of hysterectomy (removal of the womb), are irreversible in all cases.

Sterilization may be employed for a number of purposes. Therapeutic sterilization is performed for health reasons, the most common subjects being women for whom a further pregnancy would prove dangerous. Eugenic sterilization is performed as a means of racial improvement, to prevent the birth of physically deformed or mentally abnormal children. Sterilization has also been employed as a punitive measure in connection with sexual offenders. Its use may be purely contraceptive when an individual or couple for reasons of personal convenience wish to avoid conception of children. Finally, sterilization may be indirect, when it results unintentionally from an operation performed to preserve life or health for other reasons.

As an organized movement, sterilization has been closely connected with eugenics, a science founded by Sir Francis Galton in the latter part of the nineteenth century to study the influences that

[1] See V. J. O'Connor, *Journal of the American Medical Association* 136:162 (1948), who reports a successful reversal rate of only 35–40 per cent.

improve the inborn qualities of a race, and those which develop them to the greatest advantage. The United States has taken the lead in developing sterilization techniques and their implementation by the law. Vasectomy was perfected in 1889 by Harry C. Sharpe of the Indiana State Reformatory, and after unsuccessful attempts to pass sterilization statutes in Michigan and Pennsylvania, the first act became law in Indiana in 1907. Since that date thirty-three States at different times have had sterilization statutes in force. In 1926 the Human Betterment Foundation was established in New York with a principal purpose of furthering eugenic sterilization. In Nazi Germany a comprehensive sterilization statute was passed in 1933, and in its first year of operation 56,244 sterilizations were ordered.[1] In England, a departmental committee was appointed in June 1932, "to examine and report on the information already available regarding the hereditary transmission and other causes of mental disorder and deficiency: to consider the value of sterilization as a preventive measure, having regard to its physical, psychological and social effects and to the experience of legislation in other countries permitting it: and to suggest what further enquiries might usefully be undertaken in this connection". The Committee in its Report, presented in 1934, recommended the legalizing of voluntary sterilization.[2] This recommendation has not been implemented.

STERILIZATION AT COMMON LAW

In the absence of statutory authorization, compulsory sterilization is clearly a criminal offence at common law. Is voluntary sterilization a crime? Therapeutic sterilization, performed to save a patient's life or to benefit his health, is legally unobjectionable. In 1934 the Supreme Court of Minnesota affirmed that such an operation is not against public policy and that medical necessity constituted adequate grounds for its performance.[3] A similar decision was arrived

[1] *Eugenics Review*, 29:9 (1937–8).

[2] 1934. Cmd. 4485. The Report is known from the name of its chairman as "The Brock Report".

[3] *Christensen v. Thornby*, 255 N.W. 620 (Minn. 1934). The plaintiff's wife having been advised that her life would be endangered by bearing another child, her husband agreed to the performance of a vasectomy upon himself. The wife later became pregnant and the doctor was sued for failure to secure sterility.

at in a Californian case of 1952, where a doctor in the course of an operation discovered that his patient's Fallopian tubes were infected and removed the diseased portions. Judgment for the doctor was upheld on appeal.[1]

Where sterilization is carried out for eugenic or contraceptive purposes the common law position is obscure. It is well established that no one has the right to consent to the infliction of bodily harm on himself amounting to a maim, unless he has a just cause or excuse. Thus Lord Coke records a case at Leicester in 1604 where a "young strong and lustie rogue, to make himselfe impotent, thereby to have the more colour to begge or to be relieved without putting himself to any labour, caused his companion to strike off his left hand".[2] Both were found guilty of a criminal offence and fined. Is sterilization a maim? Castration was explicitly held to be a maim[3] and if it is equated with sterilization the question is answered. Dr Glanville Williams denies that sterilization is a maim, pointing out that the essence of a maim was that it lessened a person's ability to fight, and the belief that castration had this effect led to its classification under this heading.[4] Sterilization has no such effect and therefore should not be held a maim. Another jurist has pointed out that the law of maim did not apply to women and would still be inapplicable today.[5]

Even if sterilization is not a maim the question is not disposed of, for sterilization might well be classified as an assault and battery, and here again consent without a justifying cause is no defence.

In *Bravery v. Bravery*, a Court of Appeal case of 1954, Lord Justice Denning stated *obiter* that sterilization came within this

A demurrer to the complaint was sustained. The wife survived the pregnancy. For a discussion of what constitutes "medical necessity" see James V. Campbell, *Western Journal of Surgery*, 58:371 (1950).

[1] *Danielson v. Roche et al.* 241 Pac. 2d. 1028 (Calif. App. 1952).

[2] Co. Litt. 127a and 127b: 1 Hawk. P.C. 108.

[3] I Hawk. P.C. 107.

[4] *The Sanctity of Life and the Criminal Law*, p. 104.

[5] See L. Minty, *Medico-Legal Journal*, 24:54 (1956). Stephen in his Digest defines a maim as "bodily harm whereby a man is deprived of the use of any member of his body or of any sense which he can use in fighting, or by the loss of which he is generally and permanently weakened, but a bodily injury is not a maim merely because it is a disfigurement". See Article 290 (7th ed., London 1926).

definition. "Take a case where a sterilization operation is done so as to enable a man to have the pleasure of sexual intercourse without shouldering the responsibilities attaching to it," said Lord Denning. "The operation then is plainly injurious to the public interest. It is degrading to the man himself. It is injurious to his wife and to any woman he may marry, to say nothing of the way it opens to licentiousness; and unlike contraceptives, it allows no room for a change of mind on either side. It is illegal, even though the man consents to it . . ."[1] No judicial statement has been made on the validity of a consent given for a sterilization operation on eugenic grounds, apart from a remark made *obiter* by Lord Denning in *Bravery v. Bravery*, that sterilization to prevent transmission of an hereditary disease would be lawful.[2] Dr Glanville Williams also opines that voluntary eugenical sterilization is legitimate.[3] The Brock Committee, on the other hand, concluded that eugenic sterilization of mental defectives was legal but not that of normal persons. The position at common law would seem to be that therapeutic sterilization is lawful, contraceptive sterilization is unlawful, and the position of eugenic sterilization is doubtful. If the patient dies as a result of an unlawful sterilization operation, the physician is guilty of manslaughter.

Consent may be irrelevant to the criminal liability of the surgeon, but it is of importance in any civil litigation. If both spouses consent to the operation, no tort action will lie on the principle of *volenti non fit iniuria*. If, on the other hand, only one spouse consents and there are no grave medical reasons for the operation, then the physician is in danger of a suit from the other spouse for interference with marital rights. There is no case directly in point, but in *Murray v. McMurchy*, a Canadian case of 1949, 3,000 dollars

[1] *Bravery v. Bravery*, 1954, 3 All E.R. 59, at p. 68. The other two judges left the question open.

[2] The lawfulness of eugenical sterilization of mental defectives at common law is supported by the Baltimore case, *Ex parte Eaton* (Baltimore City Circuit Court, 1954). Baltimore has no sterilization statute but a decree was issued ordering the sterilization of Georgia Eaton on petition of her husband, relatives, and Incompetent Committee. Two Catholic lawyers intervened as *amici curiae* to procure rescinding of the decree on grounds of public policy but their application was denied.

[3] Op. cit., p. 106. Cf. For an opposite opinion Wharton, *Criminal Law*, 12th edition, sec. 182. "Consent cannot cure such operations on women as prevent them from having children."

damages were awarded to a woman, whose surgeon performed a sterilization during a caesarian operation.[1] The husband had consented to the operation and "any further surgical procedure found necessary by the attending physician". On the facts, the Court held that such a drastic operation without express consent was not justifiable. Sterilization by one spouse without the consent of the other and without serious medical cause would be a ground for dissolution of marriage, and could be equated with cruelty or treated as constructive desertion.[2]

Many States in the United States have sterilization statutes providing for the compulsory sterilization of mental defectives and others, and the existence of such statutes may affect public policy, so that it would favour voluntary sterilization, at any rate on eugenic grounds. Some of the statutes contain a provision stating that nothing in the statute shall prevent a sterilization being performed for therapeutic reasons.[3] Other States, while allowing a defence of medical necessity, forbid any form of sterilization other than that authorized by the statute, under pain of fine and imprisonment.[4]

[1] British Columbia Supreme Court (1949), Dom. L.R. 442, vol. 2. In England the medical defence unions decline to indemnify surgeons for performing sterilization operations. For full discussion, see H. W. Smith, "Antecedent Grounds of Liability in the Practice of Surgery". Rocky Mt. L. R. 14:233 at 276–84 (1942), also Richard C. Donnelly, "Liability of Physicians for Sterilization in Virginia", *Virg. Med. Monthly*, 78:25 (January 1951).

[2] For cruelty, see remarks of Sir Raymond Evershed and Lord Justice Hodson in *Bravery v. Bravery*, at p. 61. See also *Kreyling v. Kreyling*, 23 Atl. 2d. 800 (1942). For desertion, see H.R.H. "Sterilization as ground for the dissolution of marriage", *South African Law Journal*, 72:198 (May 1955). "Since the act in itself is evidence of an intention to put an end to the normal marital relationship, it is submitted that the other spouse would be entitled to a divorce on the ground of constructive desertion", at p. 201. See also *Cackett v. Cackett* (1950), p. 253.

[3] E.g. Arizona, Mississippi. See Appendix V for these and others.

[4] Connecticut, Kansas, and Utah statutes contain such provisions. See Appendix V. In those States forbidding birth control, contraceptive sterilization would presumably be against public policy. In 1938 a New York Court refused to grant a licence to exhibit a film dealing (unfavourably) with sterilization, the judge describing it as "an illegal practice, which is, as a matter of common knowledge, immoral and reprehensible according to the standards of a very large part of the citizenry of the State". The decision was reached by a majority of 3 to 2. *Foy v. Graves*, 3 N.Y.S. 2d. 573 (1938).

STERILIZATION STATUTES

No sterilization statute exists in England, but in twenty-eight of the American States sterilization statutes are in force. Sterilization is not dealt with directly by federal law. All these statutes have a eugenic purpose and are designed to restrict the spread of insanity, mental deficiency, feeble mindedness, epilepsy etc., through preventing the birth of children from parents suffering from these afflictions. Some declare that their purpose is also to benefit the health and well being of the sterilized person, both directly and by enabling him to be released from his institution. Vasectomy for males and salpingectomy for females are the operations most generally authorized or recommended, although other techniques such as the irradiation of the gonads may be employed. Castration is expressly excluded in one State, West Virginia, and authorized in another, Nebraska. The Nebraska provision applies to male inmates of certain named institutions who have been committed for rape, incest, and crimes against nature.[1] It is the only example in the sterilization statutes of an obviously punitive provision.

In twenty-three States sterilization is compulsory and the consent of the defective person is not required. In two, it is voluntary and the consent of the person, his spouse or guardian, is a necessary condition of performing the operation. Three States provide both voluntary and compulsory procedures. In fourteen States the compulsory provisions are mandatory and in twelve permissive. Application of the laws is limited to the inmates of designated institutions in twenty States, but in eight they also cover defectives and others who are at large. Six distinct classes of persons who may be sterilized are covered by the statutes. The feeble minded are included in all statutes and the insane in the majority. Two-thirds of the statutes designate epileptics as subjects for sterilization, and over one-third include criminals. Moral degenerates and sexual perverts are mentioned in one quarter of the statutes, and one State, Georgia, provides for sterilization of those suffering from physical disease.

[1] See Appendix V.

[2] For a complete chart of this and other classifications, see Appendix IV.

In most States the sterilization procedure is set in motion by the head of the institution where the person is confined. Administrative boards rather than judicial tribunals make the decisions to sterilize. In six States special eugenic boards have been set up. In most States the person to be sterilized must be served with notice of the proposal and is entitled to appear at the hearing where he has a right to be heard.[1] Appeal to the courts is provided for in the majority of States.[2]

STERILIZATION AND CONSTITUTIONAL RIGHTS

Until 1925 all sterilization statutes challenged in the courts were held unconstitutional, but in that year the Supreme Court of Michigan upheld the State statute, although the sterilization order was vacated.[3] In the same year, the Virginia Supreme Court of Appeals, upheld the validity of the Virginia sterilization statute in the case of *Buck v. Bell.*[4] The point was taken to the Supreme Court of the United States and the judgment affirmed by Justice Oliver Wendell Holmes in 1927.[5] From that date until 1942 judicial policy favoured sterilization statutes, but in that year the Supreme Court in *Skinner v. Oklahoma* held that the Oklahoma statute violated the equal protection clause of the 14th amendment. Since the decision in that case the constitutionality of all the sterilization statutes has been in some doubt.[6]

I. The Police Power

The first question which must be answered is whether sterilization for eugenic purposes is wrong in principle and violates the fundamental rights to life, liberty and the pursuit of happiness enunciated in the Declaration of Independence. Or, to put the question the other

[1] States without such provisions include Alabama, Connecticut, Delaware, Maine and Oregon. In Maine and Oregon, rights of appeal are granted. In Wisconsin, notice of the finding of the Board must be given but there is no right to appear at the hearing. See Appendix V.

[2] Alabama, Connecticut, Delaware and Wisconsin confer no right of appeal. See Appendix V.

[3] *Smith v. Command.* (*Wayne*), 231 Mich. 409, 204 N.W. 140 (1925).

[4] 143 Va. 310 (1925).

[5] 274 U.S. 200 (1927).

[6] 316 U.S. 535 (1942).

way round, is a State sterilization statute a valid exercise of the police power entrusted to the different States of the union? In 1918 the Supreme Court, Albany County, New York, held that the State sterilization statute was not a proper exercise of the police power, since it was designed to save expense in operating eleemosynary institutions.[1] *Smith v. Command*, as has been seen, upheld the constitutionality of the Michigan sterilization statute, but a vigorous dissent attacked the whole principle of sterilization as being unconstitutional. "The inherent right of mankind," declared the judge, "to pass through life without mutilation of organs or glands of generation needs no declaration in constitutions, for the right existed long before constitutions of government, was not lost or surrendered to legislative control in the creation of government and is beyond the reach of the governmental agency known as the police power."[2]

The decision in *Buck v. Bell*, however, made it plain that eugenic sterilization, even if compulsory, is not in principle unconstitutional. In that case, Carrie Buck, an eighteen year old feeble minded white woman, the daughter of a feeble minded mother, and the mother herself of an illegitimate feeble minded child, was ordered to be sterilized by the Virginia courts. She appealed to the Supreme Court. "We have seen," declared Justice Holmes, "more than once that the public welfare may call upon its best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetents. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve

[1] *In re Thomson*, 103 Misc. Rep. 23; 169 N.Y. Supp 638 (1918). *Osborn v. Thomson*, 185 App. Div. 902; 171 N.Y. Supp. 1094 (1918).

[2] 231 Mich. at 436, 204 N.W. at p. 149. With this may be compared the majority judgment. "What are the legal rights of the class of citizens as to the procreation of children? It is true that the right to beget children is a natural and constitutional right, but it is equally true that no citizen has any rights superior to the common welfare: measured by its injurious effect upon society, what right has any class of citizen to beget children with an inherited tendency to crime, feeble mindedness, idiocy or imbecility. . . . Under the circumstances it was not only its (the legislature's) right but its duty to enact some legislation that would protect the people and preserve the race from the known effects of the procreation of children by the feeble-minded, the idiots, and the imbeciles."

for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. (*Jacobson v. Massachusetts*, 197 U.S. 11.) Three generations of imbeciles are enough."

Justice Holmes made it plain that in cases involving sterilization of defectives, personal rights must be subordinated to the general welfare of the community and this principle has been followed in subsequent cases. Thus in *State v. Schaffer*, a Kansas decision of 1928, Judge Burch declared: "The interest of the individual invaded by the statute is of the highest order, and the invasion can be justified only as a necessary protection to some more important interest. Reducing this problem of reconciliation of personal liberty and governmental restraint to its lowest possible biological terms, the two functions indispensable to the continued existence of human life are nutrition and reproduction. Without nutrition, the individual dies; without reproduction, the race dies. Procreation of defective and feeble minded children with criminal tendencies does not advantage, but patently disadvantages, the race. Reproduction turns adversary and thwarts the ultimate end and purpose of reproduction. The race may ensure its own perpetuation and such progency may be prevented in the interest of the higher general welfare."[1]

II. Equal Protection

The fourteenth amendment to the American Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws".[2] This amendment does not automatically forbid all statutes which apply to one class only, and they may be held valid if the class has a reasonable and not an arbitrary basis, and the law applies alike to all persons similarly situated.[3] In the first decision rendered on the validity of a State sterilization sta-

[1] 270 Pac. 604. (Kansas) (1928). See also *Clayton v. Board of Examiners*, 120 Nebr. 680, 234 N.W. 630 (1931). "We think it is within the police power of the State to provide for the sterilization of feeble minded persons as a condition pre-requisite to release from a State institution", at p. 632. Cf. *Board of Eugenics v. Troutman*, 50 Idaho 673, 299 Pac. 668 (1931).

[2] Proposed June 16, 1866, declared ratified July 21, 1868.

[3] See *Hayes v. Missouri*, 120 U.S. 68, 7 Sup. Ct. 350 (1887); *Lindlsey v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 Sup. Ct. 337 (1910).

tute, *Smith v. Board of Examiners*, in 1913, the New Jersey Act was held invalid as failing to furnish equal protection of the law.[1] It applied only to the inmates of institutions and not to the population at large. The New York statute was held invalid on similar grounds in 1918.[2] Michigan followed suit in the same year.[3]

Justice Holmes departed from this line of reasoning in *Buck v. Bell* (1927), rejecting the contention that the statute failed because it applied only to inmates of named institutions and not to the multitudes outside as "the last resort of constitutional arguments". The answer to the argument, he declared, is that "the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow. Of course, so far as the operations enable those who otherwise must be kept confined to be returned to the world, and thus open the asylum to others, the equality aimed at will be more nearly reached." State courts followed the *Buck v. Bell* ruling until 1942.[4]

In 1942 the Supreme Court was called upon for a second time to consider the validity of a sterilization statute.[5] Acting unanimously, the court invalidated an Oklahoma statute authorizing the compulsory sterilization of habitual criminals convicted of "felonies involving moral turpitude". A criminal, Skinner, who had been convicted of three felonies, two robberies with firearms and one offence of chicken stealing, was ordered to be sterilized by the Supreme Court of Oklahoma. He appealed to the United States Supreme Court claiming that the statute violated the fourteenth amendment. Justice Douglas declared that the statute failed to meet the equal protection clause of the amendment, pointing out that embesslement could not be visited with sterilization but larceny could. "When the law lays an unequal hand on those who have committed intrinsically the same quality of offence and sterilizes one and not the

[1] 85 N.J.L. 46, 88 A. 963 (1913).

[2] *In re Thomson*, 103 Misc. Rep. 23, 169 N.Y. Supp. 638 (1918). *Osborn v. Thomson*, 185 App. Div. 902, 171 N.Y. Supp. 1094 (1918).

[3] *Haynes v. Lapeer*, 201 Mich. 138, 166 N.W. 938 (1918).

[4] *Davis v. Walton*, 74 Utah 80, 276 P. 921 (1929). *State v. Schaffer*, 126 Kans. 607, 270 P. 604 (1928). *State v. Troutman*, 50 Idaho 673, 299 P. 668 (1931). See also *In re Salloum*, 236 Mich. 478, 210 N.W. 498 (1926).

[5] *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment."[1]

III. Due Process

No State, declares the fourteenth amendment, shall "deprive any person of life, liberty, or property, without due process of law". In substantive law, due process is a standard of reasonableness, and thus constitutes a limitation on the exercise of the police power. In procedural law, it requires that those threatened with deprivation of rights should have both notice of this intention and opportunity to be heard. Here we are concerned with due process in its second and procedural sense.

In 1914, the Iowa sterilization statute was held invalid for failing to provide the plaintiff with a hearing.[2] "In the case at the bar," said the judge, "the hearing was a private hearing, and the prisoner first knew of it when advised of the order. Due process of law means that every person must have his day in court, and this is as old as Magna Charta; that some time in the proceedings he must be confronted by his accuser and given a public hearing."[3] In 1933 the North Carolina statute was struck down for failing to provide a hearing upon notice for the individual to be sterilized. Human rights, declared the courts, as well as property rights, require a forum with notice and hearing.[4] *Skinner v. Oklahoma*, as has been seen, nullified the sterilization statute for failing to afford equal protection, but the due process point was also raised and stressed by Chief Justice Stone. The erection of a class condemned to an invasion of personal liberty, with no opportunity for individuals to show that they were not members of the class, was a violation of due process. "And so," said Chief Justice Stone, "while the State may protect itself from the demonstrably inheritable tendencies of the individual which are injurious to society, the most elementary notions of due process would seem to require it to take appropriate steps to safe-

[1] At p. 541.

[2] *Davis v. Berry*, 216 F. 413 (1914). The Court also stated that the law amounted to a Bill of Attainder which it defined as "a legislative act which inflicts punishment without a jury trial".

[3] This reasoning was applied and the case quoted with approval in *Williams v. Smith*, 190 Ind. 526, 131 N.E. 2 (1921).

[4] *Brewer v. Valk*, 204 N.C. 186, 167 S.E. 638 (1933).

guard the liberty of the individual by affording him before he is condemned to an irreparable injury in his person, some opportunity to show that he is without such inheritable tendencies."

Where such an opportunity has been afforded, the statutes have been upheld, and the argument that they violated the "due process" provision rejected. Thus in *Smith v. Command* (Michigan 1925), the court upheld the statute, pointing out that the law required notice of the time and place of the hearing to be served on the individual concerned, as well as affording him a judicial enquiry and opportunities for defence and appeal. "Nothing further," said the court, "is required by the 'due process of law' clause of the constitution."[1] In *Buck v. Bell*, Justice Holmes carefully reviewed the procedure laid down by the Virginia statute and declared: "There can be no doubt that so far as procedure is concerned the rights of the patient are most carefully considered, and as every step in this case was taken in scrupulous compliance with the statute and after months of observation, there is no doubt that in that respect the plaintiff in error has had due process of law."[2]

The validity of each statute when challenged under "due process" is thus a matter of individual construction of the act concerned. The minimum requirements for compliance with the fourteenth amendment would seem to be a hearing on reasonable notice before a duly constituted tribunal where the person to be sterilized has a right to appear. If this tribunal is not in itself a court then a right to appeal to a court for judicial review must be included. The model Bill drafted by the Human Betterment Association includes these safeguards and detailed provisions of the form they should take.

IV. Cruel and Unusual Punishment

The eighth amendment to the American Constitution forbids the infliction of any "cruel and unusual punishment", and sterilization statutes have been challenged as violating this provision.[3] Most

[1] For a later Michigan case, adhering to this ruling, see *in re Salloum*, 236 Mich. 478, 210 N.W. 498 (1926).

[2] Other cases reaching similar conclusions and approving *Buck v. Bell* are: *State v. Schaffer*, 126 Kans. 607, 270 P. 604 (1928). *State v. Troutman*, 50 Idaho 673, 299 P. 668 (1931). *In re Main*, 162 Okla. 65, 19 P. (2d.) 153 (1933).

[3] The first ten amendments were proposed by Congress on September 25, 1789, and ratified by the requisite number of States by December 15, 1791.

State constitutions embody similar prohibitions.[1] In *Davis v. Berry*, an Iowa statute of 1913, which ordered the sterilization of any inmate of a penal institution, twice convicted of felony, was invalidated.[2] Having reviewed the history of castration as a punishment for crime, the court equated it with sterilization. A similar decision was reached in *Mickle v. Henrichs*, where a vasectomy performed on a man convicted of statutory rape was held to be ignominious and degrading, involving mutilation of the human body and destruction of its normal functions.[3] The court in *Thomson*'s case (New York 1918) distinguished between sterilization as a punishment and as a eugenic measure. Its application to defectives was held to be non-punitive, and the validity of its application to criminals left an open question.[4] In *Smith v. Command*, sterilization of defectives was again held to be non-punitive. "The only purpose of this constitutional provision," said the court, "is to place a limitation on the power of the legislature in fixing punishment for crime. There is no element of punishment involved in the sterilization of feeble minded persons. In this respect it is analagous to compulsory vaccination. Both are non-punitive. It is therefore plainly apparent that the constitutional inhibition against cruel or unusual punishment has no application to the surgical treatment of feeble minded persons. It has reference only to punishment inflicted after convictions of crimes."[5]

The validity of sterilization statutes in relation to the eighth amendment seems then to be first a matter of construction. Provided their language is not punitive, the validity of their application to non-criminal groups is clear. If their intent is unambiguously eugenic, statutes applying to criminals should on principle be equally valid, but of this there is considerable doubt. When adjudicating on statutes containing sections applicable to both criminals and defec-

[1] Not Connecticut, Illinois and Vermont.

[2] 216 F. 413 (1914).

[3] 262 Fed. 687 (D. Nev. 1918). However, in *State v. Feilen*, 70 Wash. 65, 126 P. 75 (1912) a contrary decision was reached.

[4] Cf. *Haynes v. Lapeer*, 201 Mich. 138, 166 N.W. 938 (1918).

[5] 231 Mich. 409, 204 N.W. 140 (1925). Cf. *Buck v. Bell*, 143 Va. 310, 130 S.E. 516 (1925), *Davis v. Walton*, 74 Utah. 80, 276 P. 921 (1929), *State v. Troutman*, 50 Idaho 673, 299 P. 668 (1931). *In re Clayton*, 120 Nebr. 680, 234 N.W. 630 (1931). *In re Main*, 162 Okla. 65, 19 P. (2d.) 153 (1933).

tives, judges have been careful to limit their remarks to the sections dealing with defectives. A typical case is *Clayton v. Board of Examiners.*[1] The Nebraska statute applied not only to insane persons and the feeble-minded, but also to habitual criminals and sexual perverts. The court throughout the opinion referred only to the feeble minded and drew attention to the "pointed observation" of the trial court that "the only part thereof that could or should be held constitutional would be the part relating to the sterilization of feeble minded persons".

The Constitutional Position Today

By careful drafting, statutes can escape the perils presented by the necessity of equal protection, procedural due process, and the prohibition of cruel and unusual punishments. *Buck v. Bell* appeared to have ensured the validity of sterilization in principle but this judgment must now be considered in the light of the second Supreme Court decision of *Skinner v. Oklahoma*. As has been seen, the statute was struck down principally for its violation of the equal protection clause but the remarks of the judges indicate a change in judicial policy with regard to the sterilization principle. Thus Justice Douglas declared procreation to be "one of the basic rights of man", and warned that the power to sterilize if exercised, "may have subtle, far-reaching and devastating effects. In evil or in reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is his irreparable injury. He is forever deprived of a basic liberty." Chief Justice Stone stressed the necessity of provisions to safeguard individual rights. Justice Jackson went even further, declaring that: "There are limits to the extent to which a legislatively represented majority may conduct biological experiments at the expense of the dignity and personality and natural powers of a minority—even those who have been guilty of what the majority define as crimes."[2]

[1] 120 Nebr. 680, 234 N.W. 630 (1931).

[2] For an opinion that sterilization statutes are now of doubtful constitutional validity, see H. Kalven: "A Special Corner of Civil Liberties", in a symposium, "Morals, Medicine and the Law", *N.Y.U. Law Review*, 31:1157 (1956), p. 1234.

THE PRACTICE OF STERILIZATION—ITS EXTENT

No figures are available for voluntary sterilization in either the United Kingdom or the United States. In the United Kingdom, therapeutic and indirect sterilization apart, it would seem to be comparatively rare, and compulsory sterilization is unknown. Sterilization figures are available for the United States, the majority being compulsory, but a small proportion, coming from those States which provide voluntary procedures, are voluntary. The total number of sterilizations reported since the enactment of the first American sterilization law in 1907 up to January 1, 1958, is 60,166, of which 24,008 are male and 36,158 are female. Mental deficients account for 31,038 of these, those suffering from mental illness for 26,922, the remaining 2,206 being made up of epileptics, criminals etc. California has carried out by far the highest number of sterilizations, with a grand total amounting to 19,998. Virginia ranks next with 6,811, and two other southern States have higher than average figures, North Carolina (4,777) and Georgia (2,578). Other States with high figures are Indiana (2,354), Iowa (1,738), Kansas (3,025), Michigan (3,597), Minnesota (2,325), Oregon (2,200) and Wisconsin (1,799). Figures for the eastern States are uniformly low. All figures represent a very small percentage of the total population.

In the past fifteen years the number of sterilizations reported has steadily declined. Thus in the five year period from Janurary 1941 to January 1946, 9,200 sterilizations were reported; for the following period from 1946 to 1951, this had dropped to 7,100; and in the next five years from 1951–6 it had fallen to 6,100.[2] The figures for 1957 show a further decline. Of the thirty States listed in Appendix I, three statutes had been declared unconstitutional and hence no sterilizations were reported. Seven other States where the sterilization statutes are still theoretically in force made no use of them; eight States carried out less than ten sterilizations in the year; four less than twenty; and five less than fifty. Only three States, Georgia, North Carolina, and Virginia carried out sterilizations numbering

[2] See James B. O'Hara and T. Howland Sanks: "Eugenic Sterilization", *Georgia L.J.*, 45:20 (1956).

above 100. These represented 7·09, 6·78, and 3·37 sterilizations per 100,000 of the population, respectively. In California the percentage had fallen to ·09. The grand total of sterilizations for all States was 909 in 1956 and 973 in 1957.

Psychological, social, and religious reasons account for this flight from sterilization. Both sexes have deep seated fears about sterilization and these are stronger in men than in women. Moya Woodside reports that of seventy-four welfare institutions in North Carolina which answered a question on this point, fifty-four stated that the resistance of men was greater than women.[1] The use of sterilization in Nazi Germany as a means of race extermination has immensely increased this revulsion from sterilization, and re-inforced the arguments of Roman Catholic and certain Protestant theologians against its employment. The medical profession has been traditionally reluctant to employ sterilization, and this conservative view has been strengthened by recent researches showing the uncertainty of many principles of heredity which had hitherto been accepted as axiomatic. Shortage of hospital beds, doctors and nurses, has also contributed to the reduction in sterilizations. A further reduction in numbers of sterilizations seems likely in the future.

COMPULSORY EUGENIC STERILIZATION —ITS UTILITY

"I think," wrote Justice Holmes, "that the sacredness of human life is a purely municipal ideal of no validity outside the jurisdiction. I believe that force mitigated so far as may be by good manners, is the ultimate ratio."[2] Such an approach to law excludes all question of fundamental, inalienable rights, inhering in human beings, and simplifies the approach to compulsory sterilization by prescinding from any consideration of a right to bodily integrity. Sterilization statutes must be judged solely on their utility, by a consideration of their results. In essence there is no distinction between animal breeding and human breeding, and just as one has been improved by the development of scientific techniques, so should the other. "There is a striking contrast," notes Dr Glanville Williams re-

[1] *Sterilization in North Carolina*, Chapel Hill: University of North Carolina Press, 1950, p. 66.

[2] *The Common Law*, supra note 5 at 36.

gretfully, "between human fecklessness in our own reproduction and the careful scientific improvement of other forms of life under man's control. No rose-grower, pigeon-fancier or cattle-breeder would behave as men do in their own breeding habits."[1]

The primary benefit claimed to result from schemes of compulsory sterilization is racial improvement. Insanity, feeble-mindedness, epilepsy, sexual perversion and certain forms of criminality, runs the argument, are on the increase. They are all heritable characteristics, and since defectives propagate at a higher rate than normal persons, the danger of being "swamped by incompetents" is a real and growing one. State resources are limited, and the economic burden of maintaining an ever increasing number of defectives in institutions is not one that can be permanently sustained. Consideration of the common good apart, sterilization benefits the individual concerned. It prevents the birth of children who will pass through life permanently handicapped and is beneficial or at least harmless to the health of those upon whom it is performed. Finally it enlarges individual freedom by enabling those who would otherwise have to be confined in institutions to be released. These claims must be further examined.

No evidence exists to support the contention that insanity and mental defect are increasing.[2] The numbers in mental homes and hospitals have certainly grown in recent years, but the growth is explicable on quite other grounds. Diagnosis of mental diseases has greatly improved, medical knowledge of the mental causes of physical disease has increased, and standards of medical care are higher. Many who were in need of mental treatment and could not obtain it, now have facilities at their disposal. The contention that defectives breed faster than normal people is equally baseless, despite its constant repetition.[3] The Brock Committee reported that neither their own enquiry nor the statistics made available on the size of families

[1] *The Sanctity of Life and the Criminal Law*, p. 82.

[2] See Abraham Myerson: "Certain Medical and Legal Phases of Eugenic Sterilization", *Annals on Internal Medicine*, 18:580 (1943). See also Report of the American Neurological Association on Sterilization (1936).

[3] Thus J. P. Hinton and J. E. Calcutt in their work *Sterilization: A Christian Approach*, London 1935, cite an isolated table from the Brock Report to support their claim that defective families are larger than normal families, ignoring the Report's rejection of the conclusion, p. 18.

of known defectives showed a higher birth-rate. "The supposed abnormal fertility of defectives is, in our view, largely mythical and results from the accident that from time to time distressing exceptions to the general rule find their way into the Courts and are noticed in the Press."[1] In fact mental defectives have a lower marriage rate and a higher divorce rate than normal people. Their death-rate is higher and their birth-rate lower than the average, and their sexual drives are also reduced.[2] Offspring of defectives have considerably less chance of survival than those of normal parents. The Brock Report records an investigation into 3,733 cases where the mother was defective in 3,247 and the father in 486. These marriages produced 8,841 children of which 22 · 5 per cent died before reaching the age of seven.[3]

Sterilization would undoubtedly enable a certain number of mental defectives to be released from institutions, but the proportion would not be high since only those capable of looking after themselves could be set at liberty. The Brock Committee estimated that between 3 and 5 per cent of the institutional defectives in England could be released.[4] Furthermore, the benefit to the individual might well be counterbalanced by an increase in promiscuity and hence of venereal disease. Sterilized defectives, no longer deterred by fears of pregnancy, and no longer presenting this threat to others, could easily be exploited for the basest purposes. After-care, even if available, would only be a limited answer to this problem.

Whether sterilization is beneficial to health is still an open question. A number of case studies have been carried out, but the evidence is not conclusive. Popenoe reported a series of cases of vasectomy in 1929. Of thirty-six persons suffering from mental diseases and vasectomized, twenty-two declared that they noticed no change in their sexual life: nine reported an increase in sexual activity and five a decrease. Only two of another sixty-five persons who had undergone a vasectomy experienced any decrease in virility.[5]

[1] Cmd. 4485 of 1934, p. 18.

[2] See Abraham Myerson, "Certain Medical and Legal Phases of Eugenic Sterilization", *Yale Law Journal*, 52:618–33 (1943).

[3] Pp. 16–17.

[4] *The Report*, p. 31.

[5] P. Popenoe, "Effect of Vasectomy on the Sexual Life", *Journal of Abnormal and Social Psychology*, 24:251–68 (1929). Amongst those interviewed, the time elapsed since the operation varied between three months and twenty years.

Popenoe also investigated the effect of salpingectomy on women. Of 108 psychotic women sterilized, seventy-eight experienced no change in their sexual lives, twenty-two greater satisfaction, and eight less.[1] None of the men experienced any deterioration in their general health. Some thought it had improved.

Moya Woodside's researches also indicate that sterilization has no serious physical or psychological effects in the majority of cases. A follow-up study of forty-eight married women, not mental defectives, who had undergone a therapeutic sterilization, showed that the health of twenty-four had improved, twenty-one were unchanged, and three were worse. Thirty-three reported no change in libido, six an increase, and eight a decrease. In one case no data was available. Interviews took place on an average about one and a half years after the operation. "It was in the psychological sphere," reports Moya Woodside, "that the greatest difference had been wrought through removal of fear of pregnancy. Freed from recurrent anxiety, sexual and marital relationships were felt to be improved, and women individually were much happier. Of equal importance was the physical relief from constant child-bearing and the alleviation of economic worry. Husbands were said to approve the operation in three-quarters of the cases. In the few instances where unfavourable results were observed, they were associated with neurotic personality and maladjustment in the life situation. To the group as a whole, sterilization had conferred great practical and psychological advantage and could have been even more constructive if earlier undertaken in a number of cases."[2] The Brock Committee also concluded that vasectomy and salpingectomy had no harmful results when performed on normal persons or mental deficients, although it expressed a doubt where operations on those suffering from mental diseases were concerned.[3]

Whatever the effects on the individual may be, the utility of

[1] P. Popenoe, "Effects of Sterilization on the Sexual Life", *Eugenics*, 1:9–15 (1928). See also by same author, "Menstruation and Salpingectomy among the Feeble Minded", *Pedagogical Seminary and Journal of Genetic Psychology*, 35:303–11 (1928). For other cases showing that sterilization has few physiological effects, see J. H. Landman, *Human Sterilization*, New York 1932, pp. 230–1.

[2] *Sterilization in North Carolina*, Chapel Hill 1950, pp. 115–49.

[3] *The Report*, p. 29.

eugenic sterilization must principally depend on medical knowledge of heredity. The whole sterilization movement has been based on the belief that insanity, feeble mindedness, mental defect and criminality are hereditary. The validity of these assumptions must be carefully investigated.

Criminality

Criminality as such is not a biological concept but a social and legal construct. Lombroso put forward a biological theory of crime, claiming that criminals as a class were marked by a certain stigmata of degeneration and claimed to have discovered a significantly higher proportion of vestigial and atavistic characters amongst criminals than were displayed by the normal population, but his work is now generally agreed to lack an adequate scientific basis.[1] In the absence of a satisfactory biological theory of criminality, the suggestion that it can be inherited falls to the ground. Accordingly there can be no justification on eugenic grounds for sterilizing criminals.[2] "Most writers agree," concludes the sterilization committee of the American Neurological Association, "that while there may be a constitution which in its reaction to the milieu appears as criminal conduct, the effort to breed it out by any eugenical measures is, in the present state of our knowledge, not to be recommended and that more fruitful approaches to crime are to be found in social measures of one type or another."[3]

Mental Disease: Mental Defect: Feeble Mindedness

Mental disease on the one hand, and mental defect and feeble mindedness on the other, are distinct clinical entities, although an agreed medical terminology is lacking. Mental disease is a generic term covering all the disorders affecting the mind, which before the onset of the disorder has been functioning normally. Mental defect is a state of mental retardation or incomplete development. The

[1] Lombroso still has some followers, e.g. Professor E. A. Hooton, see *The American Criminal: An Anthropological Study*, Harvard U.P. 1939.

[2] See M. F. Montagu, "The Biologist Looks at Crime", *Annals of the American Academy of Political and Social Science*, 217:46 (1941), and P. Popenoe, "Sterilization and Criminality", *American Bar Association R.* 53:575 (1928).

[3] *The Report* (1936), p. 152.

Brock Report defines it as "arrested development of mind, whether congenital or induced by injury or disease before development is complete. It is in almost all cases a permanent condition and in the present state of knowledge is beyond real cure, though much benefit may result from skilled training."[1]

The degree to which mental disease and defect are inherited is a matter of continuing dispute amongst doctors, and the layman may be excused a certain bewilderment as he ploughs his way through the welter of conflicting theories and conclusions reached by the medical profession. The science of heredity is still in its infancy and the areas of ignorance remain disconcertingly wide. Mendel's laws, although modified in certain aspects, are still the basis of contemporary investigation. Mendel's first law, that of dominance, demonstrated that when two pure bred plants with contrasting characters are cross bred, all the offspring of this first mating will show only one of two characters. The character apparent in the offspring is dominant, that which is hidden, recessive. His second law declared that the characters which appear in the original organism are transmitted to the offspring without being changed or lost. Finally he established that a hidden recessive character in a hybrid offspring may re-appear in a later generation. From the mating of two hybrids, the distribution of any unit character will be pure dominant 25 per cent: hybrid 50 per cent: pure recessive 25 per cent. The ratio is thus 1 : 2 : 1, and this is the same for later generations of hybrids.[2]

Corresponding to every inherited character, claimed Mendel, are certain determiners or genes. The early students of heredity, by assuming that a defective mind corresponded with a single defective gene, greatly oversimplified the problem. Later research has shown that there are a multiplicity of genes, whose absence or combination may result in defect or disease. The relevance of Mendel's discoveries to sterilization procedures are obvious. To eradicate mental defect it would be necessary to sterilize not only the defectives but also all "carriers", who themselves are normal but whose organism contains recessive genes, which will appear as defect in later generations. Carriers far outnumber defectives, so that the amount of

[1] At p. 7.

[2] For an account of Mendel's theories see *Encyclopaedia Britannica*, XI: 484 (1954) and *Collier's Encyclopaedia*, XIII:385 (1953).

disease and deficiency which can be eradicated by the present sterilization measures is extremely small.

Carriers apart, the problem of eradicating mental disease and defect by sterilization is made practically insoluble by ignorance of the genesis, physiological basis and pathology of mental defect and many diseases, and the non-hereditary quality of others. No hereditary factor is discoverable in arterio-sclerotic dementia, senile dementia, general paresis, or in alcoholism.[1] The pathology and physiology of schizophrenia and manic-depression are still uncertain, although prevailing opinion is that they are constitutional and hereditary.[2] Epilepsy is thought to be hereditary but research is at too elementary a stage to establish this beyond doubt.[3] Similar ignorance surrounds mental defect and feeble-mindedness, although a *prima facie* case has been made out that these are caused by genetic factors. Here again "carriers" complicate the problem. Robert Hatton having fully discussed the medical evidence concludes that 50 per cent of feeble-mindedness is inherited, but of that 50 per cent, only 11 per cent is inherited from feeble-minded parents, 89 per cent from parents who appear normal but are in fact carriers. Thus the proportion of the feeble-minded inheriting their deficiency from feeble-minded parents is only 5.5 per cent.[4]

The Brock Report concludes that heredity plays "a large part" in mental disorders, but immediately goes on to say that except in the case of Huntington's chorea and myclonus epilepsy, both rare

[1] See Abraham Myerson: "Sterilization", *Atlantic Monthly*, 186:52 (1940, II, 5).

[2] Ibid. See also J. H. Landman, *Human Sterilization*, New York 1932, p. 164. While stating that a number of mental diseases are hereditary according to the preponderance of medical opinion, he points out that the study of the causes of the diseases and of mental deficiency has been practically "fruitless". See also Walter Wheeler Cook, "Eugenics or Euthenics", *Illinois Law Review*, 37:287–332 (1943) for a discussion of the medical evidence; Myerson, "Certain Medical and Legal Phases of Eugenic Sterilization", *Annals on Internal Medicine*, 18:580 (1943), also *Yale Law Journal*, 52:618 (1943). L. J. Doshay concludes: "The possibility of the inheritance of mental diseases is practically nil." "Evolution disproves heredity in the Mental Diseases", *Medical Journal and Record*, 131:143–8, 194–7, 248–50 (1930).

[3] See above articles and *Kentucky Law Journal*, 23:523 (1935).

[4] Ibid., p. 525. Cf. Estimate given by Fisher, "Elimination of Mental Defect", *Journal of Heredity*, 18:529 (1927), where he concludes that 89 per cent of all feeble-minded children come from normal parentage. See also Myerson, *American Journal of Medical Jurisprudence*, 1:253 (1938).

diseases, there is no conclusive evidence that inheritance follows mendelian ratios, and the part played by heredity varies widely between different types.[1] "It is impossible," states the Report, "in the present state of our knowledge about the causation of mental defect to forecast with certainty whether a child of any given union will exhibit mental abnormalities. It can, however, be shown that, whether the cause be bad heredity or adverse environmental conditions, or both, the children of parents one or both of whom are mentally defective are, on the average, below the normal, and our enquiry shows that nearly one third of such children as survive are likely to be defective, and more than two fifths must be expected to exhibit some degree of mental abnormality."[2]

Moral Degeneracy and Perversion

A quarter of the American sterilization statutes provide for the sterilization of moral degenerates and perverts. Whatever these terms may mean, and they are nowhere defined, no evidence exists that they are inheritable characteristics. Medical opinion increasingly favours environmental explanations of homosexuality and the congenital theories once widely held are now discredited save in relation to a tiny minority. Sterilization of such people might conceivably be justified on punitive grounds but not on those of eugenics.

Conclusions

The case for compulsory sterilization can only be sustained on utilitarian grounds if it can be clearly shown that mental defect and disease are hereditary. As Dr Landman has put it, "the human sterilization movement is as strong as our scientific knowledge concerning the inheritance of human qualities. Logically, therefore, those socially inadequate persons in our midst, the heredity of whose undesirabilities is doubtful, should not be subjected to sterilization until we are more certain as to which are inherited."[3] As has been

[1] *The Report*, p. 27.

[2] Ibid., p. 21. For views that mental deficiency is heritable, see Clarence Gamble, *American Journal of Mental Deficiency*, 57:123 (1952), Walter E. Southwick, *Journal of Mental Science*, 85:707 (1939), B. S. Johnson, *American Journal of Mental Deficiency*, 50:437 (1946).

[3] Op. cit., p. 247.

seen, medical knowledge is so fragmentary in this sphere, and the dispute over the nature of the hereditary processes so fundamental, that scientific knowledge cannot be said to have reached the degree of certainty requisite to justify a policy of compulsory sterilization. It is even doubtful whether the vast majority of the sterilization statutes satisfy the requirements of substantial due process, which requires their provisions to bear a reasonable relationship to existing medical knowledge of heredity. It may of course be argued that the statutes are justified on environmental rather than hereditary grounds, for if they do not eradicate hereditary defect, they do prevent children being brought up in unsuitable homes and by inadequate parents. Construed as they are written, most of the statutes could not be upheld on this ground, and even in those that lay down "social" reasons for sterilization, the avoidance of environmental hardship would probably not be considered a sufficient justification for such a drastic step as sterilization.

This conclusion has been reached by several authoritative committees. Thus the Brock Report states: "We assume that the Legislature would not feel justified in compelling any persons to submit to sterilization, unless it could be shown beyond reasonable doubt that some at least of their offspring would either be mentally defective or would develop mental disorder. In the present state of knowledge no such proof can be produced."[1] A special committee appointed by the British Medical Association on November 12, 1930, reached a substantially similar conclusion. Sterilization, it decided, might be advisable for a small number of mental defectives who were not in need of institutional care, provided they were carefully selected and adequate supervision exercised to prevent promiscuous intercourse and the spread of venereal disease.[2] The American Neurological Association has also recommended the abandonment of a compulsory sterilization programme. Genetics, stressed the Report, is still an experimental science, and no thorough-going application of its laws to the mental and personality diseases is possible. "We do not believe that society needs to hurry into a programme based on fear and propaganda. Although the problem of mental

[1] At p. 37.

[2] See *The British Medical Journal Supplement*, June 25, 1932, where the Report is printed.

disease and defectiveness is enormous, there exists no new social or biological emergency."[1] The danger of cutting off the assets as well as the liabilities that may be transmitted to posterity must also be born in mind.[2] What is needed now is an institute to carry out a long range programme into the nature of human heredity.

With compulsory sterilization laws ruled out, the alternative of voluntary sterilization remains. The Brock Report justified this by laying down the principle that "no person, unless conscience bids, ought to be forced to choose between the alternative of complete abstinence from sexual activity or of risking bringing into the world children whose disabilities will make them a burden to themselves and society".[3] Voluntary sterilization would accordingly be available only for eugenic and not for contraceptive reasons. The Brock Report suggests three classes of people for whom voluntary sterilization should be available:

(a) Those who are mentally defective or have suffered from mental disorder;

(b) Those who suffer from, or are believed to be carriers of grave physical disorders which have been shown to be transmissible;

(c) Those who are believed to be likely to transmit mental disorder or defect. To carry out this operation the authorization of the Ministry of Health would be required as well as the support of two medical practitioners. A small advisory medical committee should be set up to advise on doubtful cases.[4] A major difficulty in the way of establishing such a programme would be to show that it was indeed voluntary. Many defectives would be quite incapable of giving a true consent, since they would be unable to grasp all the implications of a sterilizing operation. The opportunity of exercising un-

[1] *The Report of the American Neurological Association* (1936), p. 183. For Summary of the Report see *American Journal of Medical Jurisprudence*, 1:253–7 (1938).

[2] See Myerson, "Sterilization", *Atlantic Monthly*, 186:52, p. 55. Referring to an investigation in Massachusetts he writes: "In many groups we found feeble mindedness for one or two generations, but we also found collaterals who reached distinction and were respected in the community. On the other hand, we found no family tree, however distinguished, which did not have hanging from its branches, the mentally sick, the defective, the alcoholic, the failure, the ne'er-do-well, and the social misfit", p. 55.

[3] Op. cit., p. 90.

[4] *The Report*, p. 57.

due influence would be great and it would be difficult to provide safeguards against its employment. Any voluntary sterilization statute would have to tackle this problem, which cannot be dismissed in the words of the Brock Report as "mere casuistry".[1]

STERILIZATION—THE TRADITIONAL CHRISTIAN VIEW

Traditionally, Christian theology has condemned all forms of direct sterilization, whether compulsory or voluntary. This condemnation derives from the Christian view of the creatureliness of man. Man is not absolutely master of his own body: he has no "dominium" over it, but holds it in trust to use for God's purposes as shown in the design of nature. Man's procreative faculty is one of his most important endowments and he cannot do away with it at will. Steriliaztion is more than a mutilation of the body, it involves the deprivation of a major faculty and its gravity is to be measured more by its effect than by the actual surgical operation, which today can be of the simplest. The Christian view can be traced back to the teaching of the Church Fathers. In the early Church, certain zealots, misinterpreting the gospel passage "there be eunuchs which have made themselves eunuchs for the kingdom of heaven's sake" (*Matthew* XIX, 12), castrated themselves. These practices were condemned in both canon law and the writings of the Fathers.[2] The body, they taught, could only be mutilated if a portion were diseased and it was essential for the welfare of the body as a whole that the diseased portion be severed. Self-castration in order to preserve chastity failed in its object and was also contrary to Christian doctrine since it posited the body as intrinsically evil and denied the use of man's free will.

These arguments were developed in the Middle Ages by St Thomas Aquinas and other ecclesiastical writers. A man who mutilates his body without cause sins in three ways: he violates the natural law of self-preservation and proper self-love; he offends against the community of which he is a part; and he commits an offence against God. The motive of curbing unchastity may be laudable but the

[1] *The Report*, p. 42.
[2] See Conc. Nic., Can I: Apost. Can. 21–4, Chrys., *Hom. lxii in Matt.*

method is both ineffective and disproportionate. Control of evil thoughts, not mutilation, is the remedy. To this law there is only one exception. "If, however, the member be decayed and therefore a source of corruption to the whole body, then it is lawful with the consent of the owner of the member, to cut away the member for the welfare of the whole body, since each one is entrusted with the care of his own welfare. The same applies if it be done with the consent of the person whose business it is to care for the welfare of the person who has a decayed member; otherwise it is altogether unlawful to maim anyone."[1]

The traditional teaching was re-affirmed by Pius XI in his enyclical on "Christian Marriage" when he declared: "Christian teaching establishes, and the light of human reason makes it most clear, that private individuals have no other power over the members of their bodies than that which pertains to their natural ends; and they are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, except when no other provision can be made for the good of the whole body."[2] Pius XII confirmed his predecessor's teaching.[3] The Church of England Moral Welfare Council stated the same underlying principle in 1951: "Man does not belong to himself. He was created by God and for God, and therefore belongs to God. Consequently he has not an unqualified right to dispose of himself as he wishes; his right is limited by the laws of his Creator (which are also the laws of his own nature), and by the nature of his destiny."[4] All direct sterilization was forbidden by a decree of the Holy Office of February 21, 1940.[5]

[1] *Summa Theologica*, London 1929, II–II lxv.

[2] *Casti Connubii*, New York 1931, p. 33.

[3] See address to Italian Midwives (*A.A.S.* 18:43): "Direct sterilization, that which aims at making procreation impossible as both means and end, is a grave violation of the moral law, and therefore illicit." Cf. Statement to Italian Urology Society. (*L'Osservatore Romano*, October 10, 1953).

[4] *Human Sterilization: Some Principles of Christian Ethics*, published for the Church of England Moral Welfare Council by the Church Information Board (1951), p. 3.

[5] See Decree of February 1940, *A.A.S.* 32:73. Cf. 1951 *A.A.S.* 43:844.

STERILIZATION AND THE STATE

St Thomas Aquinas discusses the right of the State to use sterilization as a punitive measure. He concludes quite simply that since the State may take the life of a guilty person for the good of the community, *a fortiori*, it may impose the lesser penalty of mutilation.[1] Whatever the soundness of this view in principle, humanitarian sentiments would prevent any Christian from putting it forward as a just and appropriate penalty today. Moral theologians reject sterilization as a punishment for sexual offences on the grounds that it is unreasonable. It might well not be a punishment for the type of individual concerned, and since the sexual urge is not diminished it does not protect society.

May the State enforce a compulsory eugenic sterilization policy? Applying the principles just outlined, the conclusion must be negative. A man's right to bodily integrity is only invasible if he cuts himself off from the community by the commission of a grave crime. Mental and physical defect are misfortunes but they are neither crimes nor sins. Public authority has no right to prescribe sterilization, declared Pius XII, "or to have it carried out to the harm of the innocent".[2] Similarly, the committee on the family at the Lambeth Conference of 1958 stated that all were agreed that "any government policy of compulsory sterilization as a means of population control is unacceptable to the Christian conscience, at least in our present state of knowledge and understanding; some indeed felt that such a policy could never be justified".

It has been argued by Justice Holmes, amongst others, that just as the State has the right to call on its citizens for the sacrifice of their lives in war, so it may require a surrender of their reproductive functions from those who would harm society by procreation. The analogy with war does not hold good on the Christian view, for while every citizen is under a duty to defend the State against unjust aggression, there is no moral duty to submit to sterilization in

[1] *Summa Theologica*, II–II lxv.

[2] *A.A.S.* 18:443. See also decree of Holy Office of March 21, 1931, issued with approval of Pius XI condemning eugenic sterilization.

order to improve the national stock.[1] There may be a moral duty to abstain from intercourse if one knows one is likely to transmit a serious defect, but that is another matter. The analogy with vaccination is also erroneous since vaccination does not deprive the individual of any important faculty and protects the community not by mutilating the individual but by protecting him. The compulsory sterilization argument is based on the assumption that only the strong and the fit have a right to live a human life in the full sense of living it unmaimed. It is only a short step from this assumption to the further conclusion that such people have no right to life at all. Such an approach is profoundly un-Christian for it substitutes for the Christian attitude of loving care for the physically and mentally unfortunate, one of calculating utility which would eliminate them in "the national interest".

In the past, Catholic writers have advocated compulsory sterilization by the State.[2] They have justified sterilization on grounds of necessity in order to protect the community from inundation by criminals and defectives. For their arguments to apply, two conditions of fact would have to be fulfilled. First, the threat to the State from defectives would have to be so serious as to threaten its survival: second, segregation would have to be ruled out as a practical possibility. Neither of these conditions pertain today. This view appears irreconcilable with a condemnation of sterilization as evil in itself.[3]

[1] The mere power to procreate cannot be in itself an attack on the State as is the assault of an enemy. Thus the analogy breaks down on a second point. Nor does the State in war intend the killing of its citizens or itself carry it out.

[2] For a discussion of these writers and their views, see Joseph B. Lehane, *The Morality of American Civil Legislation concerning Eugenical Sterilization*, Washington D.C. 1944. See also S. M. Donovan, *The Ecclesiastical Review*, 42:271 (1910). Other Catholic writers supporting this view have been Fr. J. A. Ryan, Dr Mayer and Dr Bruehl. Such views would not be tenable by Catholics today.

[3] A further difficulty is raised by the custom of castrating singing boys of the Sistine Choir to preserve their treble voices. St. Alphonsus records two contrary opinions on this point, one condemning it and the other justifying it as being for the common good. (*Theol. Mor.* III n.374). Benedict XIV condemned the practice but provided that such persons were not to be expelled from the choir. (*De Synodo Diocesena*, XI, cap. 7, n.4). See E. J. Mahoney "Sterilization—A Difficulty", *The Clergy Review*, 4:71.

Voluntary Sterilization

Christian opinion is less unanimous when voluntary instead of compulsory sterilization is considered. Both the Roman Catholic and Anglican Churches recognize the validity of therapeutic sterilization as morally justified if it is the only means of securing the welfare of the body as a whole. Thus if vasectomy and salpingectomy are the only means of curing a disease, their use is legitimate. Their employment would fall within the exception mentioned by St Thomas Aquinas in connection with mutilation. Neither communion, on the other hand, countenances the use of sterilization where a woman's health would be gravely endangered by a further pregnancy. Dr Glanville Williams finds such a view "astonishing" but it is not unreasonable.[1] Sexual intercourse is not a necessity and the woman can adequately safeguard her future either by abstention, or in the view of many Anglicans by the use of contraceptives. Such sterilization is not strictly speaking therapeutic but contraceptive. In the case of subnormal couples, incapable of handling contraceptives efficiently, the case for employment of sterilization is stronger, but only of course amongst those who regard the use of contraceptives as legitimate. The latter might extend sterilization as a legitimate procedure from defectives in danger of physical injury through pregnancy, to defectives who would be placed under overwhelming strain through further child-bearing. As the Church of England Moral Welfare Council points out, this conclusion may prove difficult even for those who approve of contraception. Sterilization might well be considered too grave a course to employ save directly for the cure of a disease. Furthermore, while in sterilization of a defective wife whose health would be threatened by pregnancy, and where intercourse can be regarded as inevitable, the causal connection between the operation and the result aimed at is very close; in the second case, where the burden of looking after children is the main concern, the connection is remote. A further complication in this latter case is that there is no indication which of the parents should be sterilized.[2]

A second form of sterilization recognized as lawful by both Communions, may conveniently be called "incidental" or "indirect".

[1] Op. cit., p. 100.

[2] See *Human Sterilization* (1951), pp. 7–9 and 15.

The category is created by applying the principle of double effect.[1] The principle, familiar to students of moral theology, states that an action, not in itself intrinsically evil, followed by both a good and a bad result, may be performed, provided that the good and not the evil effect is directly intended, that the good effect is not produced by means of the evil effect, and a grave reason exists for permitting the evil to occur. The distinction between "direct" and "indirect" intention, is that between foreseeing a consequence and desiring it, and merely foreseeing it while desiring some other consequence. An example will make the working of the rule clearer. It can justify the performance of hysterectomy. The consequence directly intended by the removal of a diseased womb is the saving of a woman's life, that indirectly intended is her sterilization. All the conditions of the principle of double effect are fulfilled so the operation is legitimate.

Voluntary sterilization for eugenic reasons is not countenanced by the Roman Catholic Church. The Church of England Committee puts forward the argument that a normal couple who know that one partner is a carrier of defect may regard the sexual organ as "diseased", in that the genes it secretes are defective, and given circumstances of "necessity", may resort to sterilization. This argument is answered by pointing out that the organ is not diseased in relation to the parental body but only to the hypothetical child. What constitutes "necessity"? Here the couple have two alternatives; they can abstain or they can use contraceptives. Accordingly sterilization would not be justified in their case.[2]

One is then faced, once more, with the problem of the subnormal couple, incapable of using contraceptives efficiently or of abstaining from intercourse. Here the Commission expresses doubt whether any genuine voluntary sterilization can arise and points to the uncertainty of all the children being defective. The final conclusion is so subtly phrased that for fear of misleading it must be quoted in full. "With a mentally normal couple who decide that the risk of handing on a disease to children is so grave that there must be no children, but that contraceptives are not sufficiently infallible to

[1] See J. T. Mangan, S.J., "An Historical Analysis of the Principle of Double Effect", *Theological Studies*, 10:41. St. Thomas Aquinas, *Summa Theologica*, II–II lxiv. For a further discussion of the principle see E. Healey, *Medical Ethics*, Chicago 1956, and A. Bonnar, *The Catholic Doctor*, New York 1950.

[2] *Human Sterilization*, pp. 11–12.

make avoidance of the risk absolutely certain: some would say they may resort to sterilization, others would say that a decision can only be arrived at after distinguishing between a *certainty* and a *probability* that the disability would affect someone in the family."[1] Curiously enough the Report makes no mention of segregation as an alternative solution to the problems raised by mental defect.

The Lambeth Conference of 1958 formulated a somewhat obscure statement on voluntary sterilization. The Committee appears to have been greatly influenced by the present irreversibility of sterilization in declaring it an abdication of an important area of responsible freedom and "a violation of the human body".[2] Presumably this judgement would be revised if sterilization could be reversed. The Committee evidently concluded that in some circumstances sterilization is justifiable for it recommends "prayerful and serious consideration" before a decision to be sterilized is taken. The circumstances are not specified.

STERILIZATION AND THE LAW —CHRISTIAN VIEW

A State policy of compulsory sterilization conflicts radically with Christian morals and social policy. It violates the fundamental rights of the human person, and confers powers on the State to which it has no claim. The maintenance of State authority is in no way incompatible with the presence within the community of unsterilized mental defectives and others. As has been established, the uncertainty shrouding the whole hereditary process, the ignorance of the pathology of mental diseases and defect, and the high proportion of the population who would have to be sterilized for a eugenic policy to have substantial effect, must result in the rejection of compulsory sterilization on the level of practical ethics. Christians, accordingly, have not only a right but a duty to resist the legislative sponsoring of such projects, and to work for their repeal where they have been enacted. The experience of Nazi Germany has convinced many of the validity of the Christian contention that once sterilization powers have been conferred on the State, the danger of their ruthless

[1] *Human Sterilization*, pp. 15–16.
[2] *The Lambeth Conference*, 1958, 2:149.

exploitation is a real one. A Christian campaign on this issue could accordingly expect general public support. It is a little surprising to observe that the Catholics of Connecticut who have fought so fiercely for the retention on the statute book of a birth control statute which invades the privacy of the home, should have acquiesced for all practical purposes in the presence of sterilization provisions in the State Code which can be invoked without hearing or appeal.

Segregation is sometimes put forward as an alternative to sterilization to check the increase of mental defect. Here again, the paucity of medical knowledge would be a powerful inhibiting factor, but even assuming the predictability of transmission of defect, grave objections are raised by the Christian conscience. The State has the right to impose restrictions on the individual person only when they are proportionately necessary for the preservation of the common good. Since deprivation of liberty is in many ways a more fundamental deprivation of fundamental human rights than sterilization, it could only be justified if the community was in danger of innundation by defectives, and of this no evidence exists. Segregation for the eugenic benefit of the State alone must be ruled out, but if it can be shown that those concerned are a danger to others, or else a danger to themselves because of their irresponsibility, it is legitimate. What of those who do not come within these categories? No person has a moral right to procreate if he has no reasonable assurance that he can beget healthy offspring and make reasonable provision for them. The State may accordingly forbid the marriage of such persons in defence of the common good. Some American States already forbid the marriage of habitual criminals or drunkards:[1] others deny it to insane and feeble-minded individuals who may pass the condition on to their children.[2] Nearly all the States require evidence of freedom from communicable syphilis before a marriage may be contracted. As to procreation by such persons outside of marriage, this could be restricted by the criminal law.

[1] E.g. Virginia, Washington, Delaware and Ohio.

[2] E.g. Michigan, Nebraska and South Dakota. No system for the registration of the insane and feeble minded exists and the provisions are easily evaded. See Glanville Williams, op. cit., p. 95. This, however, could be remedied. For a discussion of Catholic principles involved, see J. P. O'Brien, *The Right of the State to make disease an impediment to marriage*, Catholic University of America Press, 1952.

Yet another alternative to compulsory sterilization is a voluntary procedure. Those who regard sterilization as wrong in itself would clearly oppose any campaign for its extension conducted by official authority. Even those who do not subscribe to this judgment might well conclude that until further medical research has been carried out on both the mechanism of heredity and the effects of sterilization, such a campaign would be premature. Does the Christian conscience require all sterilization to be forbidden by law? Many would agree with Pius XII that public authority has no right to permit sterilization "under the pretext of any 'indication' whatsoever", and that apart from the established exceptions of therapeutic and indirect sterilization, it should be legally banned. This, however, is not the only conclusion compatible with Christian belief.

Most Christians would agree that a contraceptive sterilization undertaken solely for reasons of personal convenience should not be tolerated by the law. At common law this is probably the present legal position. The justification for such a prohibition is that sterilization directly injures the common good when it deprives the community of potentially healthy stock. Again contraceptive sterilization by removing fear of pregnancy might well increase immorality and the consequent spread of venereal disease. Furthermore, those who wish to avoid children may resort to contraceptives, and even those Christians who condemn contraception would rather see their employment than the greater evil of sterilization.

When voluntary sterilization for eugenic purposes is considered, different considerations arise. If those who have good reason to think that they will transmit disease or mental defect are permitted to sterilize themselves it is difficult to see how the common good suffers. The possibility of loss to the community is at least balanced by that of possible gain. A law which permitted such sterilization provided that competent medical authority certified that it was being employed for well founded eugenic reasons would not *ipso facto* be unacceptable to Christians. The decision whether to employ it would be left to the individual taking into account the tenets of his particular denomination. The alternative choices of abstention from sexual intercourse or the use of contraceptives would still be available. The State would in no way be approving of sterilization but would merely be stating that in the restricted circumstances out-

lined the final decision should be left to the individual rather than the State.

Some, however, would oppose even this concession on the grounds that it would only be the thin end of the wedge, and would lead to legalizing other forms of sterilization.[1] They might also raise the objection that in countries where there is a government health service, the State would be promoting an immoral practice. This difficulty could be surmounted by excluding the facilities from the service.

SPECIFIC CATHOLIC PROBLEMS

Sterilization in Catholic hospitals

In both England and the United States the Roman Catholic Church is responsible for the administration and staffing of a number of hospitals. Although they perform a public service, these hospitals are essentially private institutions, and apply the religious principles already discussed in the treatment of their patients. Practice in Catholic hospitals is conveniently summed up in a recent publication *Ethical and Religious Directives for Catholic Hospitals.*[2] Procedures that induce either permanent or temporary sterility may only be employed when:

"(a) they are immediately directed to the cure, diminution, or prevention of a serious pathological condition;

(b) a simpler treatment is not reasonably available; and

(c) the sterility itself is an unintended and, in the circumstances, an unavoidable effect." These principles allow the performance of the routine vasectomy carried out in many hospitals after certain operations, but Father Gerald Kelly points out that in patients of the younger age group, it should only be employed where there is a special reason for its use.[3] The development of the anti-biotic drugs may soon render this routine vasectomy unnecessary.

The above conditions, based on ethical considerations, are not

[1] Thus the Italian Penal Code (art. 552) prohibits acts directed to render a person impotent to procreate.

[2] Published by the Catholic Hospital Association, St. Louis, Missouri (1955).

[3] See Gerald Kelly, "Vasectomy with Prostatectomy", *Medico-Moral Problems*, II:35, St. Louis 1956.

open to objection in a pluralist society. They are not imposed on patients against their will, for Catholic practice is of reasonably common knowledge, and the average patient expects certain ethical limitations to medical procedure when he enters a Catholic hospital. If he wishes he can always transfer to another hospital where sterilization operations may be more readily available. Every patient certainly has the moral right to be informed if an operation beneficial to his health cannot be performed for ethical reasons. He clearly cannot compel the doctor to perform an operation to which the latter morally objects, but the decision not to employ it should be shared by the patient so that he may have an opportunity of exercising responsible assent. The information will create a liberty in practice to go elsewhere, but its exercise need not be the primary purpose of the communication. Knowledge may be a dangerous thing but the patient has a right to it. Whether the physician has an obligation to inform the patient where the operation can be carried out is more open to question and must be decided by the individual doctor considering all the circumstances of the case.[1]

Catholic doctors, nurses, etc., in non-Catholic hospitals

Catholic doctors or officials in charge of hospitals may not "formally" co-operate in sterilization operations. Formal co-operation, according to Catholic theologians, occurs when one acts with another in performing an external act which is wrong in itself with or without internal assent, or where assistance is given to one performing an immoral act by an act in itself indifferent but with the intention of promoting the evil action.[2] Material co-operation is the performance of an indifferent act helping another's evil act but with no intention of forwarding it. Material co-operation is licit provided a grave reason exists for co-operating. Loss of employment by a nurse or doctor would constitute such a reason. Thus it would never be lawful for a Catholic doctor to perform a sterilization operation under any

[1] I would say that such an obligation does exist. The doctor is primarily concerned with the health of the body and not of the soul. In informing his patient of the availability of alternative facilities he is in no way advocating their employment but discharging his duty of making all relevant information available without which the patient cannot come to a considered decision.

[2] Performance of an act wrong in itself with no internal assent is sometimes separately classified as "immediate" co-operation.

circumstances, but an anaesthetist might give the anaesthetic before such an operation, if his refusal would cause grave inconvenience, without violating his conscience. An elaborate casuistry has been built up in the literature on the subject, but few difficulties arise in practice, since most non-Catholic hospitals are careful to defer to the scruples of their Catholic medical staff, and excuse them from operations to which they morally object.[1]

Catholic judges

Catholic judges, like any others, are bound to uphold the law of the country, but they, like their medical colleagues, may find themselves in difficulty when dealing with an application for sterilization. It is arguable that the judge is not responsible for the state of the law, that he only administers it and takes it as he finds it. He neither approves nor disapproves of particular provisions but applies them in accordance with the instructions of the legislature. There is a sphere of judicial discretion, but it is limited, and a judge who consistently enforced the dictates of his own conscience rather than the law would be guilty of betraying his office. Thus the correct attitude for a Catholic judge when faced with a sterilization application would be to set his own pre-possessions aside, and in a case which fell clearly within the relevant statute, to apply the law.

Against this it may be said that a judge may never oblige anyone to commit what he considers an intrinsically immoral act, for in doing so he becomes a "material" co-operator. Such is the conclusion of Father Davis in his book, *The Moral Obligations of Catholic Civil Judges*. "The judge in such cases," he writes, "cannot throw responsibility from his shoulders, nor can he render a decision obliging a person to commit an act intrinsically evil. Therefore the Catholic judge can never in his judicial action render a decision putting the law of eugenical sterilization into effect."[2] Since the judge is obliged by his position to enforce the law, he is left with no alternative save that of arranging not to hear the case, or if this proves impossible, to resign from office. The withdrawal of Catholic judges

[1] See A. Bonnar, op. cit., pp. 50–1, Edwin Healey, op. cit., pp. 103–6, and J. B. Lehane, *The Morality of American Civil Legislation concerning Eugenical Sterilization*, Washington 1944, pp. 96–7.

[2] Washington 1953, p. 147.

from office would doubtless be considered an evil, from the Church's point of view, but the avoidance of this evil would not be considered a justification for taking part in an intrinsically evil act.

LIBERAL CHRISTIAN VIEW AND THE LAW

Not all Christian denominations accept the traditional Christian view on sterilization, but owing to the paucity of the literature on the subject and the custom among the sects of leaving such matters to be decided by the individual conscience, it is almost impossible to formulate their views precisely. In 1954 a questionnaire was circulated in the United States among some thirty-six denominations of which thirty replied.[1] Roman Catholics and Moslems were the only denominations to condemn sterilization in general, twenty denominations had not defined their attitude on medical and voluntary eugenical sterilization, and twenty-two took no stand on sterilization for social or economic reasons. Seven approved eugenical sterilization and one disapproved. Judaism's general position seems clear. Sterilization is prohibited.[2]

Joseph Fletcher in his book, *Morals and Medicine*, commends the legalizing of voluntary sterilization. He agrees with the authors of *Sterilization—a Christian approach*,[3] that the foremost concern of Christianity is personality, and that divine rights and duties are not expressed through natural or physical necessities but only through personal human experience and decision. To them it is blasphemy to say that God wills that stunted and defective children should be born. They emphatically reject the view that to exist without taint is better than not to exist at all. When there is a reasonable cause to eliminate the possibility of reproduction, then the Christian has not only a right but a responsibility to do so. Like the utilitarians, this group would welcome the legalizing of voluntary eugenic sterilization.

[1] See Theodore W. Adams, "Thoughts on the Control of Postpartum Sterilization: Presidential Address", *Western Journal of Surgery*, 62:101 (1954).

[2] See Emanuel Rackman, "A Jewish View" in Symposium on Morals, Medicine and the Law, *New York U. Law Review*, 31:1211 (1956).

[3] By J. P. Hinton and J. E. Calcutt, London 1935.

APPENDIX V

STERILIZATIONS REPORTED IN THE U.S.A.

From date of enactment of first sterilization law (Indiana 1907) to January 1, 1958.[1]

State	1957	1956	*Grand Total* *Total*	*Male*	*Female*
Alabama[2]			224	129	95
Arizona		8	30	10	20
California	13	23	19,998	10,132	9,866
Connecticut	2	7	544	46	498
Delaware	8	12	879	451	428
Georgia	268	268	2,758	1,205	1,553
Idaho			33	8	25
Indiana	29	34	2,354	1,157	1,197
Iowa	48	69	1,738	498	1,240
Kansas			3,025	1,763	1,262
Maine	5	1	310	45	265
Michigan	47	27	3,597	958	2,639
Minnesota	12	19	2,325	518	1,807
Mississippi		6	602	154	448
Montana			256	72	184
Nebraska	5	8	857	401	456
New Hampshire	8	8	678	152	526
New York[2]			42	1	41
North Carolina	305	216	4,777	989	3,788
North Dakota	14	14	975	359	616
Oklahoma			556	122	434
Oregon	23	38	2,200	848	1,352
South Carolina	34	43	235	18	217
South Dakota	4	2	783	281	502

[1] Compiled from figures published by the various States.
[2] Not reported. Alabama law inoperative since 1935. New York law declared unconsitutional in 1912. Washington ibid. 1942.

State	1957	1956	*Grand Total* *Total*	*Male*	*Female*
Utah	12	15	744	340	404
Vermont	1		253	83	170
Virginia	128	87	6,811	2,678	4,133
Washington[1]			685	184	501
West Virginia		3	98	15	83
Wisconsin	7	1	1,779	391	1,408
Totals	973	909	60,166	24,008	36,158

[1] Washington law declared unconstitutional in 1942.

APPENDIX VI

STERILIZATIONS REPORTED IN THE U.S.A.

(Per 100,000 population) (1957)

Based on latest U.S. Dept. of Commerce, Bureau of the Census, Population Estimate.

Georgia	7·09	Minnesota	·36
N. Carolina	6·78	Nebraska	·34
Virginia	3·37	Vermont	·27
N. Dakota	2·17	Wisconsin	·18
Delaware	1·82	California	·09
Iowa	1·71	Connecticut	·09
S. Carolina	1·43	Arizona	0·
New Hampshire	1·4	Idaho	0·
Utah	1·4	Kansas	0·
Oregon	1·3	Mississippi	0·
Indiana	·64	Montana	0·
Michigan	·61	Oklahoma	0·
South Dakota	·57	West Virginia	0·
Maine	·53		

APPENDIX VII

YEARS IN WHICH STERILIZATION STATUTES FIRST PASSED IN THE U.S.A.

Alabama	1919	Montana	1923
Arizona	1929	Nebraska	1915
California	1909	New Hampshire	1917
Connecticut	1909	North Carolina	1919
Delaware	1923	North Dakota	1913
Georgia	1937	Oklahoma	1931
Idaho	1925	Oregon	1917
Indiana	1907	South Carolina	1935
Iowa	1911	South Dakota	1917
Kansas	1913	Utah	1925
Maine	1925	Vermont	1931
Michigan	1913	Virginia	1924
Minnesota	1925	West Virginia	1929
Mississippi	1928	Wisconsin	1913

APPENDIX VIII

TYPES OF STATE STERILIZATION STATUTES IN THE U.S.A.

State	*Voluntary*[1]	*Compulsory*[2]	*Voluntary*[3] *and Compulsory*	*Extra*[4] *Mural*	*Eugenics*[5] *Board*
Alabama		x			
Arizona		x			
California		x			
Connecticut		x			
Delaware		x		x	
Georgia		x			x
Idaho		x		x	x
Indiana		x			
Iowa		x		x	x
Kansas		x			
Maine			x		
Michigan		x		x	
Minnesota	x				
Mississippi		x			
Montana		x			x
Nebraska		x			
New Hampshire		x			
North Carolina			x	x	x
North Dakota		x			
Oklahoma		x			
Oregon		x		x	x
South Carolina		x			
South Dakota			x	x	
Utah		x		x	
Vermont	x				
Virginia		x			
West Virginia		x			
Wisconsin		x			

[1] Consent of defective person, spouse or guardian required.
[2] Consent of defective person not required.
[3] Law contains provision for either voluntary or compulsory.
[4] Law contains provision for individuals outside of institutions.
[5] Authorization agency for sterilization operation. (Other States: operations passed on by designated State agencies.)

APPENDIX IX

SUMMARY OF UNITED STATES STERILIZATION STATUTES

I. *Alabama.* (Code of Alabama, 1940, Title 45, Sec. 243. (1476).)
Compulsory and mandatory.

Persons covered:	Inmates of Partlow State School for Mental Defectives.
Grounds:	None stated.
Initiation:	Asst. Superintendent of school consults with Superintendent of school.
Authority making order:	Asst. Superintendent and Superintendent of school.

II. *Arizona.* (Arizona Code Annotated 1939, Vol. I, Art 4, Secs. 8–401 through 8–406.) (Laws 1929, Ch. 44, Secs. 1–6.)
Compulsory and permissive.

Persons covered:	Any person confined in a State hospital for the insane who is afflicted with an hereditary form of insanity that is recurrent, idiocy, imbecility, feeble mindedness or epilepsy.
Grounds:	Hereditary and social.
Initiation:	Superintendent of hospital petitions State Board of Medical Examiners.
Authority making order:	State Board of Medical Examiners.
Note:	Inmate has right to counsel and to appeal to the courts. "Nothing in this act shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State, by a physician or surgeon licensed by this State, which treatment may incidentally involve the nullification or destruction of the reproductive functions."

III. *California.* (Senate Bill No. 730 passed Senate April 12, 1951; passed Assembly May 8, 1951; signed by Governor May 23, 1951.)
Compulsory and permissive.

Persons covered:	Any person who has been lawfully committed or admitted to any State hospital or State home and who is afflicted with or suffers from any of the following conditions: (a) mental disease, which may have been inherited and is likely to be transmitted to descendants. (b) mental deficiency in any of its various grades. (c) marked departure from normal mentality.
Grounds:	Hereditary for the insane; none are stated for mental deficients.
Initiation:	Superintendent of hospital or home gives certification to the Directors of Mental Hygiene.
Authority making order:	Director of Mental Hygiene.
Note:	Inmate has right of appeal.

IV. *Connecticut.* (General Statutes of Connecticut, Revision of 1949, Vol. II, Secs. 4182–4183.)

Compulsory and mandatory.

Persons covered:	Inmates by whom procreation would be inadvisable who are confined in the State Prison, State Hospitals for Mental Illness at Middletown, Newton and Norwich, Mansfield State Training School and Hospital and Southbury Training School.
Grounds:	Hereditary or medical. "If . . . procreation by any such person would produce children with an inherited tendency to crime, mental illness, feeble mindedness, idiocy or imbecility and there is no probability that the condition of any such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby."
Initiation:	The warden, superintendent or doctor in charge of each institution named, reports to a special board of each institution.
Authority making order:	The responsible body is a special board at each institution which is composed of two skilled surgeons and the doctor in charge of the institution.
Note:	"Section 2684. Penalty for unlawful operation. Except as authorized by section 2683, any person who shall

perform, encourage, assist in or otherwise promote the performance of either of the operations described in said section, for the purpose of destroying the power to procreate in the human species, or any person who shall knowingly permit either of such operations to be performed upon such person, unless the same shall be a medical necessity shall be fined not more than one thousand dollars or imprisoned in the State Prison not more than five years, or both."

V. *Delaware.* (Revised Code of Delaware 1953, volume 4. Titles 16–32.) Compulsory and permissive.

Persons covered: (a) All persons legally confined in any State or county institution which has charge of insane, feeble minded or epileptic persons.

(b) any feeble minded, epileptic, chronically or recurrently insane person confined in any institution within the State, supported in whole or part by the State or any county thereof, or any such person at large.

(c) habitual or confined criminals who have been convicted of at least three felonies by any courts of this State or of any other State of the United States.

Grounds: For those in category (a) above, where procreation is inadvisable; none stated for category (b); for those in category (c) above, that the criminality is caused by mental abnormality or mental disease.

Initiation: Board or commission controlling appropriate institution makes application to the State Department of Public Welfare.

Authority making order: Special panels appointed by the State Department of Public Welfare.

VI. *Georgia.* (Code of Georgia Annotated, Book 28, Title 99, Ch. 99–13.) Compulsory and mandatory.

Persons covered: Patients or inmates of any State home or hospital for mental or physical disease; any State colony or institution for the care of the mentally or physically defective, deficient, or diseased; any State prison or penitentiary, correction school or reformatory, detention home or camp.

Grounds: Hereditary.

Initiation: Superintendent, manager or director of the institution in which the patient or inmate is confined submits recommendation to the State Board of Eugenics.

Authority making order: State Board of Eugenics, composed of Chairman of State Board of Control, Director of State Board of Health and Superintendent of Milledgeville State Hospital.

Note: Right of inmate to receive notice and to appeal to courts.

VII. *Idaho.* (Laws of Idaho Title 66, Ch. 8. 66–801 through 66–812. Also 1955 S. B. No. 82 amending section 39–101.)

Compulsory and mandatory.

Persons covered: All feeble minded, insane, epileptic, habitually criminal, morally degenerate and sexually perverted persons who are, or are likely to become a menace to society.

Grounds: Hereditary and social.

Initiation: Superintendents or Warden of appropriate institution report quarterly to the State Board of Health: Eugenics Section.

Authority making order: State Board of Health: Eugenics Section.

Note: Right of appeal, etc.

VIII. *Indiana.* (Burns Indiana Statues, Annotated [1950 Replacement] Vol. 5, part 2, Title 22, Ch. 16, Secs. 22–1601 through 22–1618.)

Compulsory and permissive.

Persons covered: (a) Any person afflicted with hereditary forms of insanity that are recurrent, epilepsy or incurable primary or secondary types of feeble mindedness, who is an inmate of any hospital or other State or county institution which has the care or custody of insane, feeble minded or epileptic persons.

(b) any person afflicted with idiocy, imbecility, or feeble mindendess for whom application for commitment to an institution for the feeble minded has been filed in a court of competent jurisdiction.

(c) any person afflicted with insanity for whom application for commitment to an institution for the

insane has been filed in a court of competent jurisdiction.

Grounds: Hereditary for the insane; social for all categories.

Initiation: For (a) the superintendent of the institution in which the patient is confined petitions the Commissioner of Mental Health. For those in (b) and (c) above, certification is made by examining doctors appointed by court.

Authority making order: For (a) the Commissioner of Mental Health. For (b) and (c) the court in which the application for commitment is filed.

Note: Provisions for appeal.

IX. *Iowa.* (Iowa Code Annotated: Vol. 9, Ch. 145.)

Compulsory and mandatory.

Persons covered: All persons living in the State who are feeble minded, insane, syphilitic, habitual criminals, moral degenerates or sexual perverts and who are a menace to society.

Grounds: Hereditary and social.

Initiation: Each member of the State Board of Eugenics, etc., submit names in quarterly reports to the State Board of Eugenics.

Authority making order: State Board of Eugenics.

Note: Provisions for notice and appeal to courts.

X. *Kansas.* (General Statutes, Annotated 135, Ch. 76, Art. 1.)

Compulsory and mandatory.

Persons covered: Any inmate of State Penitentiary, Hutchinson Reformatory, State hospitals for the insane, State Hospital for Epileptics, State Training School or State Industrial School for Girls.

Grounds: Hereditary and medical.

Initiation: Warden or superintendents of appropriate institutions.

Authority making order: The chief medical officer of any institution, the governing board of such institution and the Secretary of the State Board of Health constitute the Board of Examiners which makes the order.

Note: Section 76–155. "Penalty for unlawful operations except as authorized by this act, every person who shall perform, encourage, assist in or otherwise promote

the performance of either of the operations described in this act, for the purpose of destroying the power to procreate the human species, unless the same shall be a medical necessity, shall be fined not less than 100 dollars nor more than 500 dollars, and imprisoned in the county jail not less than six months nor exceeding one year."

XI. *Maine.* (Revised Statutes of Maine [1944], Vol. I, Ch. 23.)

Voluntary and compulsory and mandatory.

Persons covered: (a) Any feeble minded person or person afflicted with mental disease who is at large.
(b) inmates of any State institution which has the care or custody of feeble minded persons.

Grounds: Hereditary or medical for those at large; hereditary only for those confined in State institutions as defined above.

Initiation: (a) For those designated in (a) above, the operation is recommended, upon consent of the person or his nearest relative or guardian, by a doctor who may call council of two doctors to examine patient. For those designated in (b) above, the recommendation is made in writing by the medical staff or institution physician and is accompanied by the sworn statement of the superintendent.

Authority making order: Operation voluntary for those at large. For those in institutions as defined above the Commissioner of Institutional Service is responsible.

Note: Provisions for appeal.

XII. *Michigan.* (Compiled Laws of the State of Michigan 1948, Vol. IV, Ch. 720.)

Compulsory and mandatory.

Persons covered: (a) Inmates of thirteen named institutions and any other hospital, training school, farm colony, prison or public institution maintained in whole or in part by the State of Michigan.
(b) mentally defective persons at large.

Grounds: Hereditary and social.

Initiation: (a) Superintendent of appropriate institutions.
(b) Petition to probate court by relatives or one of list of officials.

Authority making order: Probate Court which appoints first two doctors to make investigation.
Note: Provisions for hearing and appeal.

XIII. *Minnesota.* (Minnesota Statutes Annotated, Vol. 17, Ch. 256, Secs. 256.07 through 256.10.)
Voluntary only.
Persons covered: (a) All persons lawfully committed as mentally deficient to the guardianship of the Director of Social Welfare.
(b) All persons committed as insane to the custody of the superintendent of a State hospital for the insane in which they have been confined for at least six consecutive months.
Grounds: None stated.
Initiation: Director of Public Institutions after consultations.
Authority making order: The Director of Public Institutions.

XIV. *Mississippi.* (Mississippi Code 1942 Annotated, Vol. 5, Title 25, Ch. 3, Art. 10, Secs. 6957 through 6964.)
Compulsory and permissive.
Persons covered: Patients or inmates of the Mississippi State Insane Hospital, East Mississippi Insane Hospital or Mississippi School and Colony for the Feeble minded.
Grounds: Hereditary and social.
Initiation: The superintendent of the institution in which the patient is confined petitions the Board of Trustees or the directors of such institutions.
Authority making order: The local Board of Trustees or the Directors of the Institution.
Note: Provisions for appeal.
Nothing in this statute shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State by a physician or surgeon licensed by this State, which treatment may incidentally involve the nullification or destruction of the reproductive functions.

XV. *Montana.* (Revised Codes of Montana 1947, Vol. 3, Ch. 6, Secs. 38–601 through 38–608.)
Compulsory and mandatory.

Persons covered: Idiots, feeble minded, insane or epileptic persons who are inmates of State custodial institutions.
Grounds: Hereditary or medical.
Initiation: Chief physician of inmate's institution submits certificate to the State Board of Eugenics.
Authority making order: The State Board of Eugenics approves certificate by endorsement.
Note: Provision for appeal.

XVI. *Nebraska.* (Revised Statutes of Nebraska 1943, Vol. IV, Ch. 83, Art. 5, Secs. 83–501 through 83–509.)
Compulsory and mandatory.
Persons covered: Feeble minded, insane, habitually criminal, morally degenerate and sexually perverted patients or inmates who are subject to parole or discharge from the Institution for the Feeble minded, hospitals for the insane, Reformatory for Women, Industrial Home, industrial schools and the Penitentiary.
Grounds: Hereditary and social.
Initiation: Superintendents of appropriate institutions to Board of Examiners in quarterly reports.
Authority making order: The Board of Examiners.
Note: Provisions for appeal.
"If it shall appear from the warrant of commitment that any male inmate shall have been convicted for rape, incest, any crime against nature or for violation of section 28–901, then it shall be the duty of the board of examiners, if ordered by the court, to perform or cause to be performed an operation for the castration of such male inmate; Provided, however, if such operation of castration is performed, the inmate shall be eligible to apply for a commutation of sentence within one year after said operation." (Sec. 83–504).

XVII. *New Hampshire.* (Revised Laws of New Hampshire 1943, Vol. I, Title XV, Ch. 160, Secs. 1 through 14.)
Compulsory and permissive.
Persons covered: Inmates of any State or county institution who are afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble mindedness or epilepsy.

Grounds: Hereditary and social.

Initiation: Petition of superintendent of institution is presented to Board of County Commissioners or governing body of appropriate institution.

Authority making order: Either County Commissioners or governing body of appropriate institution.

Note: Provisions for appeal.

"Nothing herein shall be construed so as to prevent medical or surgical treatment for sound therapeutic reasons of any person in this State, whether such treatment involves the nullification or destruction of the reproductive functions or otherwise." (1929, 138: 12)

XVIII. *North Carolina.* (General statutes of 1943, Vol. 2, Ch. 35, Secs. 35–6 through 35–57.)

Voluntary and compulsory and mandatory.

Persons covered: (a) Any mentally diseased, feeble minded or epileptic inmate or patient of any penal or charitable institution which is supported wholly or in part by the State or any subdivision thereof.

(b) any such person at large.

Grounds: Hereditary, social, or medical.

Initiation: The head of the institution or County Superintendent of Public Welfare petitions the Eugenics Board of North Carolina.

Authority making order: Eugenics Board of North Carolina.

Note: Provisions for hearing and appeal.

"Nothing contained in this article shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State by a physician or surgeon licensed in this State, which treatment may incidentally involve the nullification or destruction of the reproductive functions. (1933, c. 224, s. 17).

XIX. *North Dakota.* (North Dakota Revised Code 1943, Vol. 2, Title 23, Ch. 23–08, Secs. 23–0801 through 23–0815.)

Compulsory and mandatory.

Persons covered: Feeble minded, insane, epileptic, habitually criminal, morally degenerate and sexually perverted inmates (who are potential producers of offspring and who,

	because of the inheritance of inferior or anti-social traits, probably would become social menaces or wards of the State), confined in the State Penitentiary, State Hospital for the Insane, State Training School and the Grafton State School. Criminals covered by the act are those moral degenerates and sexual perverts who are addicted to the practice of sodomy, the crime against nature or other gross, bestial and perverted sexual habits and practices prohibited by statute.
Grounds:	Hereditary and medical.
Initiation:	Warden, superintendent etc., of named institutions in quarterly reports.
Authority making order:	Board of Examiners.
Note:	Provisions for appeal.

XX. *Oklahoma.* (Oklahoma Statutes 1941, Title 35, Ch. 2, Secs. 141–146.)
Compulsory and permissive.

Persons covered:	Male patients under sixty-five and female patients under forty-seven about to be discharged from the Hospital for the Insane at Norman, the Hospital at Supply, Hospital for the Insane at Vinita, Institute for the Feeble minded at Enid, State Penitentiary at McAlester, State Reformatory at Granite, any other penal institution existing or to be created or any other such institution supported in whole or in part from public funds.
Grounds:	Hereditary and social.
Initiation:	Superintendent or warden petitions State Board of Affairs.
Authority making order:	State Board of Affairs.
Note:	Provisions for service and appeal.

XXI. *Oregon.* (Oregon Compiled Laws Annotated, Vol. 8, Title 127, Ch. 8, Secs. 127–801 through 127–811.)
Compulsory and mandatory.

Persons covered:	All persons who are feeble minded, insane, epileptic, habitual criminals, incurable syphilitics, moral degenerates or sexual perverts; any person convicted of

	the crime of rape, incest, sodomy, contributing to the delinquency of a minor by sexual act or act of sexual perversion, the crime against nature or any other crime specified in section 23–910 of the laws; or any person convicted of attempting to commit any of said crimes.
Grounds:	Hereditary or social.
Initiation:	Quarterly reports to the State Board of Eugenics are made by the Superintendents of the Oregon State Hospital and other named institutions.
Authority making order:	State Board of Eugenics.
Note:	Provisions for appeal.

XXII. *South Carolina.* (Code of Laws of South Carolina 1942, Vol. 3, Sec. 5009.)

Compulsory and permissive.

Persons covered.	Any inmate of State penal or charitable institutions who is afflicted with any hereditary form of insanity that is recurrent, idiocy, imbecility, feeble mindedness or epilepsy.
Grounds:	Hereditary and social.
Initiation:	Superintendent of institution petitions the Executive Committee of the State Board of Health.
Authority making order:	Executive Committee of State Board of Health.
Note:	Provisions for appeal.

XXIII. *South Dakota.* (South Dakota Code of 1939, Vol. 1, Title 30, Ch. 20.05, Secs. 30.0501, through 30.0514.)

Voluntary and compulsory and mandatory.

Persons covered:	A: Any feeble minded person and those feeble minded inmates about to be discharged from the State School and Home for the Feeble minded.
Grounds:	That such feeble minded person is of such an age as to be capable of procreation and, by reason of his feeble mindedness, would not be capable of properly performing the duties of parenthood.
Initiation:	Any State resident's complaint, asking that order and commitment be made. Filed with Chairman of county's commission for feeble minded.

(Laws of 1943 [Ch. 112 - H.B. 206—approved March 8, 1943])

Persons covered: Any person committed to the Yakton State Hospital and about to be discharged who is afflicted with or suffering from
(a) mental disease which may have been inherited and is liable to be transmitted to descendants,
(b) perversion or marked departure from normal mentality,
(c) disease of a syphilitic nature.

Grounds: That such person is capable of procreation and that procreation would be probable.

Initiation: At least ten days before the operation, the Superintendent of the hospital notified in writing the inmate, etc.

Authority making order: Superintendent of Yankton State Hospital, supported by majority of medical staff.

Note: Provisions for appeal.

XXIV. *Utah.* (Uta Code Annotated 1943, Vol. 5, Title 89, Secs. 89–0–1 through 89–0–12. Supplement, Secs. 89–0–1 through 89–0–8 amended; Secs. 89–0–13 and 89–0–14 added. Amended by L.1945, H.B. 87, Approved February 27, 1945.)

Compulsory and permissive.

Persons covered: Any inmate (whether voluntary or committed) confined in the Utah State Hospital, Utah State Training School, State Industrial School or State Prison; or any person adjudged to be insane, an idiot, an imbecile, feeble minded, epileptic or who is afflicted with habitual degenerate sexual criminal tendencies.

Grounds: Hereditary and social.

Initiation: Superintendent or Warden petitions board of institution.

Authority making order: Board of particular institution to which petition is directed.

Note: Provisions for hearing and appeal. "Except as authorized by this title, every person who performs, encourages, assists in or otherwise promotes the performance of any of the operations described in this title for the purpose of destroying the power to procreate the human species, unless the same shall be a medical necessity, is guilty of a felony."

XXV. *Vermont.* (Vermont Statutes, Revision of 1947, Ch. 425, Secs. 10,027 through 10,030.)

Voluntary only.

Persons covered:	Any mentally defective or insane resident of State who is likely to procreate mentally defective or insane persons, if not sterilized.
Grounds:	Hereditary and social.
Initiation:	When such person is confined in a State institution, the Commissioner of Institutions and Corrections is authorized with the consent of the inmate and his natural or legal guardian, to contract for examination and certification under oath by two physicians and surgeons not employed by the State. In all other cases, two physicians and surgeons, legally qualified to practice in the State, make the examination and certification under oath. The consent of the inmate or his legal or natural guardian is required.
Authority making order:	None—no order is made.

XXVI. *Virginia.* (Code of Virginia 1950, Vol. 6, Title 37, Secs. 37–231 through 37–245. 1950 Cum. Supp. Secs. 37–231 and 37–241.)

Compulsory and permissive.

Persons covered:	Any inmate, afflicted with hereditary forms of mental illness that are recurrent, mental deficiency or epilepsy, who is confined in Western State Hospital, Eastern State Hospital, Southwestern State Hospital, Central State Hospital, Lynchburg State Colony or Petersburg State Colony.
Grounds:	Hereditary and social.
Initiation:	Hospital or colony superintendent petitions State Hospital Board.
Authority making order:	State Hospital Board or member or members thereof designated by such Board.
Note:	Provisions for Appeal. Reservation re therapeutic sterilization. "Nothing in this chapter shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State, by a physician or surgeon licensed by this State, which treatment may incidentally involve the

nullification or destruction of the reproductive functions."

XXVII. *West Virginia.* (West Virginia Code of 1949 Annotated, Ch. 16 Art. 10, Secs. 1394–1400.)

Compulsory and permissive.

Persons covered: Any inmate, afflicted with any hereditary form of insanity that is recurrent, idiocy, imbecility, feeble mindedness or epilepsy, who is confined in Weston State Hospital, Huntington State Hospital, Spencer State Hospital, Lakin State Hospital, West Virginia Industrial School for Boys, Industrial Home for Girls, Industrial School for Coloured Boys or Industrial Home for Coloured Girls.

Grounds: Hereditary and social.

Initiation: Superintendent of institution in which patient is confined petitions in writing the State Public Health Council.

Authority making order: Public Health Council.

Note: Provisions for appeal. Reservation re medical sterilization. "Nothing in this article shall be construed to authorize the operation of castration nor the removal of sound organs from the body, but this provision shall not be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State, by a physician or surgeon licensed by this State, in such a way as may incidentally involve the nullification or destruction of the reproductive functions."

XXVIII. *Wisconsin.* (Wisconsin Statutes 1949, Title VII, Sec. 46.12.)

Compulsory and permissive.

Persons covered: Inmates and patients of institutions having charge of criminal, mentally ill, mentally deficient and epileptic persons.

Grounds: Procreation is inadvisable.

Initiation: Department of Public Welfare submits names to special Board.

Authority making order: Department of Public Welfare, upon unanimous finding of experts and superintendents.

APPENDIX XV

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