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STERILIZATION OF CRIMINALS.

REPORT OF COMMITTEE "F" OF THE INSTITUTE.

JOEL D. HUNTER, CHAIRMAN.¹

The first report² of the Committee on the Sterilization of Criminals in 1914 contained a summary of the twelve laws³ then existing which provided for sterilization and also a consideration of the main issues involved. It was found that criminals were included in those subject to sterilization in all the states except Michigan. Indiana was the only state at that time in which criminals had been sterilized under the law. There were two cases in Washington which had been appealed to the Supreme Court of that state, and the Supreme Court had handed down an opinion upholding the decision of the lower courts which had ordered the performance of the operations. At the time the report was written the operations had not been performed.

The main issues involved in the consideration of the laws authorizing and legalizing sterilization were stated as follows:

(1) Are the characteristics included in the statutes accepted by authorities as heritable?

(2) Of the possible surgical operations, is that one chosen which least endangers the life of the individual and involves the least detriment to functions other than procreation?

(3) Is it a morally permissible act for the state to prevent individuals from producing their kind?

(4) Is sterilization the most efficient method socially?

(a) Does it accomplish its purpose without making the individual operated upon a greater social menace to the community?

¹The full membership of the committee is as follows: Joel D. Hunter, Chairman, Juvenile Court, County Building, Chicago, Ill.; Edward J. Gavegan, Judge of Supreme Court, New York, N. Y.; Bleecker Van Wagenen, 443 Fourth avenue, New York City, N. Y.; William A. White, Government Hospital for Insane, Washington, D. C.; T. D. Crothers, Hospital for Inebriates, Hartford, Conn.; H. H. Laughlin, Eugenics Record Office, Cold Spring Harbor, Long Island, N. Y.; Hastings H. Hart, Sage Foundation, 130 East Twenty-second street, New York City, N. Y.; John Webster Melody, Catholic University, Washington, D. C.; William T. Belfield, Chicago Medical Society, 32 North State street, Chicago, Ill.; Peter J. O'Callaghan, Paulist Mission, Washington, D. C.

²Journal of Criminal Law and Criminology, September, 1914

³Indiana, Washington, California, Connecticut, Nevada, Iowa, New Jersey, New York, North Dakota, Michigan, Kansas and Wisconsin.

(b) Is sterilization more efficient in removing people with defective germ plasm than segregation or any other method?

(5) Are state officials as a whole worthy of being entrusted with such powers as must be given under a sterilization law?

(6) Is the constitutional guarantee of the individual infringed upon?

In the consideration of these issues the committee sought to state some of the opinions that had been publicly expressed and to set forth the things which should be proven before sterilization of criminals should be advocated.

The second report⁴ contained a summary of the six bills⁵ authorizing sterilization which were introduced after August, 1914. None of these bills became laws. In that report the committee asked for an appropriation in order that a study might be made, in the states in which the sterilization laws had been enforced, of the eugenic and therapeutic values of the sterilization of criminals. One of the concluding paragraphs reads as follows:

"In last year's report the committee considered the sterilization both of criminals and of the various types of mental defectives as they were classified in the sterilization laws. So far as the sterilization of criminals was concerned, the committee found that there was no agreement among the authorities it consulted that criminality was inherited, but that a majority of them felt that criminality per se was not heritable. Whichever opinion is held it must be recognized that a difference of opinion does exist. There is so much difference of opinion among authorities concerning the inheritance of criminality that it seems hardly wise for states to pass laws authorizing the sterilization of criminals for eugenic reasons."

From this Dr. William T. Belfield dissented. A paragraph from his minority report reads:

"The second proposition of the report alleges that the dominant opinion among students of heredity is skepticism as to the transmission to offspring of those mental traits manifest in habitual criminals. As this is a statement of opinion only, the undersigned records his dissenting opinion to the effect that the notoriously extensive coincidence of habitual criminality with feeble-mindedness, its frequent association with atypical physical features—both of which are admittedly transmissible—and the manifold records of criminal heredity, are

⁴The American Bar Association Journal, Vol. II, No. 1, Jan., 1916.

⁵Kansas, Missouri, Montana, Ohio, Pennsylvania and Washington.

some of the familiar facts which have created, among students of heredity, a dominant sentiment at variance with that predicated in the report."

In this year's report the committee proposes (1) to give a summary of sterilization laws which have been passed since the last report was written; (2) to state what has been done to put the laws into operation.

(1) Summary of the Sterilization Laws passed in 1915:

There were two sterilization laws enacted in 1915. These were in Nebraska and in Iowa. There never had been such a law in Nebraska, and the one passed is of a limited scope. The one passed in Iowa was in place of the Act declared void in *Davis vs. Berry*.⁶

In summarizing these two laws the material will be arranged as follows:

(a) Persons subject to sterilization.

(b) Method of selecting persons to be operated upon and mode of procedure.

(c) Types of operation authorized.

(a) Persons subject to sterilization:

The Iowa statute includes only the inmates of the state hospitals for the insane. That of Nebraska is not so limited, as all feeble-minded or insane inmates of all the state institutions come under the provisions of the Act.

(b) Method of selecting persons to be operated and mode of procedure:

In Iowa the superintendent of any state hospital for the insane and a majority of the medical staff must agree after investigation and examination that the operation would be for the best interests of the patient and society before they can authorize its performance on a patient, and then they cannot without the written consent of the husband or the wife, if the patient is married, or if unmarried, of the parent, guardian or next of kin, and they also must have the approval of a majority of the members of the state board of control.

In Nebraska the board of commissioners of state institutions is required to appoint a board of examiners of five physicians from the medical staffs of the institutions under their control. The statute states that this board of examiners shall examine into the innate traits, "The mental and physical conditions, the personal records and the family traits and histories of all inmates who may be subject to

⁶216. Fed. 413.

parole or discharge from the institution for the feeble-minded, hospitals for the insane, the penitentiary, reformatory, industrial schools, industrial home, or other such state institution, and if after careful examination and investigation such board of examiners find that such inmate is feeble-minded, or insane, that such inmate is capable of bearing or begetting offspring, that children born or begotten by such inmate would inherit a tendency to feeble-mindedness, insanity, or degeneracy, that such children would probably become a social menace and that procreation by such inmate would be harmful to society, and that such inmate should not be paroled or discharged, as the case may be, unless sterilized, then in every such case it shall be a condition prerequisite to the parole or discharge of such inmate that said inmate be made sterile, and that such operation be performed for the prevention of procreation as in the judgment of said board of examiners shall be most appropriate to each individual case."

The Act further provides that no operation shall be performed without its nature, character and consequence being fully explained to the inmate and also to the husband, wife, parent, guardian, or next of kin, nor without obtaining the written consent of the relative consulted and the assent of the inmate in so far as said inmate is capable of assenting thereto.

(c) Types of the operation authorized:

In Iowa for the male the operation must be vasectomy and for the female that known as the section of the Fallopian tubes with implantation in the uterine muscles.

In Nebraska it is left to the board of examiners to choose the operation which they think most appropriate to each individual case.

Criminals are not mentioned in either of these statutes. If the committee concerned itself only with the laws authorizing the sterilization of criminals it would not have reported on these two new laws. It does report on them because of the possibility, if not the probability, that if the feeble-minded or insane patients of the state institutions of Nebraska and Iowa should have children, some of them would be criminal either through some inherited mental defect or else through the absolute lack of wholesome and normal influences in infancy and childhood.

(2) The operation of the Sterilization Laws.

The following table shows the number of operations which have been performed under the law in the different states:

Indiana—No operations since 1908.

Washington—No operations had been performed before last year's report was written. No information has been received since then.

California—Insane, 634; criminal, 1; since passage of law.

Connecticut—Insane, 21; since passage of law.

Nevada—No operations.

Iowa—No operation under old law.

New Jersey—No operations.

New York—No operations. (Case pending before courts, March, 1916.)

Michigan—No operations.

Kansas—No information. No operations up to 1915.

Wisconsin—Feeble-minded, 24.

The correspondence which has been received by the committee shows that the law is being carefully administered in the states where operations are being performed.

So far as the committee has been able to ascertain, no attempt is being made to enforce any of the laws providing for the sterilization of criminals except in Washington, where the law is punitive.

APPENDIX

The Committee has sought to make a review of recent publications on the Sterilization of Criminals. It has found, however, few works which call for notice. These moreover are mostly by physicians who generally advocate vasectomy for certain classes among the insane, feeble-minded and epileptics. Only indirectly therefore do their works bear upon the aspect with which the committee is primarily taken up. These publications have nearly all appeared in various medical journals. We might single out for special attention:

Clark, C. M.: "Plea for Sterilization of Criminals, Epileptics, Imbeciles and Insane." *Northwest Med.* Dec., 1912.

Singer, H. D.: "Sterilization of Insane, Criminal and Delinquent." *Ill. Med. Jour.* May, 1913.

Mack, C. N.: "Psychiatric Aspects of Sterilization Law." *Mich. State Med. Soc. Jour.* August, 1913.

Lydston, G. F.: "Is Sterilization Destined to be a Social Menace." *Ill. Med. Jour.* Dec., 1913.

Peters, A. N.: "Sterilization of Mental Defectives from Physiologic Standpoint." *Med. Rec. N. Y.* Aug., 1914.

Brown, Sanger: "Applied Eugenics." *American Jour. of Insanity.* Oct., 1914.

Swift, H. M.: "Sterilization of Unfit." *Maine Med. Assoc. Jour.* Dec., 1914.

Gallant, H. Earnest: "Sterilization of the Unfit by Vasectomy from the Medico-Surgical Standpoint." *Medical Times N. Y.* March, 1915.

Boston, Chas. A.: "Sterilization. The Latest Suggested Remedy for Social Inadequacy." *Medical Times, N. Y.* April, 1915.

"The Sterilization of Criminals and Defectives"—*Journal of American Society of Sanitary and Moral Prophylaxis*: John N. Hurty, M. D., January, 1912. The discussion recorded as following the presentation of the above paper is interesting particularly because of the account given by Dr. Johnstone of the results of vasectomy in the institution at Vineland, N. J.

Of the foregoing only the article by Chas. A. Boston addresses itself to the consideration of sterilization from the legal viewpoint. The fullest presentation of the question under this aspect is to be found in "The Legal, Legislative and Administrative Aspects of Sterilization," *Bulletin 10B, Eugenics Record Office.* Feb. 3rd, 1914.

It may be generally said of the publications that have thus far appeared upon sterilization that they are largely engaged in setting forth the character of vasectomy and its applicability to the evil threatening society from the multiplication of the unfit. The time has now come, however, when a work is called for that will show the results of this operation in the cases in which it has been performed.

Regarding workings of the law compelling sterilization in New York State, reference may be here made to the adverse criticism contained in the Annual Report of the Rome Custodial Asylum for the year ending September 30, 1915.

A general appreciation of the proposed practice of sterilizing the socially unfit may be found in "Being Well-Born," by Michael F. Guyer, Professor of Zoology, the University of Wisconsin, Indianapolis, 1916.