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THE HUMAN STERILIZATION MOVEMENT

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Eugenics is the science of human betterment. It is concerned with the study of being well-born and with all the social agencies, which may improve or impair, physically and mentally, the racial qualities of future generations. Its purpose is to discover how we may breed better human beings. Applied eugenics deals with a conscious effort for improving the human race by such methods, as immigration regulation, birth control, restrictive marriage legislation, and human sterilization legislation.

It is a young science and hence much that is myth, fable or postulate passes for scientific fact. What the science needs is more research and less propaganda. Unfortunately, our scant scientific eugenic knowledge has been prostituted to justify ancestor worship, race superiority, snobbery, class distinction, intellectual aristocracy, anti-semitism and race prejudice. The future of the science of eugenics is promising, but at present it needs debunking.

It is not true that boiler washers, engine hostlers and miners, who have large families, are necessarily idiots and morons; that the college graduates, the people in "Who's Who" and the so-called successful people, who might include racketeers and bootleggers, are necessarily physically, mental and morally superior people; that celebrated individuals necessarily beget celebrated offspring; that idiotic individuals necessarily beget idiotic children; that the Jukes and the Kallikaks beget only criminal and idiotic children; that the Edwards family begets only superior children; that a mental trait, like high intelligence or idiocy, is transmissible in accordance with the Mendelian theory; that because the color of guinea pigs is transmissible in accordance with Mendelism that therefore human mental traits must also be transmissible in accordance with Mendelism; and that there are more children in the families in which both parents are idiots or feeble-minded than in which both parents are normal mentally.²

Nevertheless, society is alarmed at the large number of our socially inadequate people. Jeremiads have been issued with much

¹The College of the City of New York.

²For a thorough study of the biology, eugenics, heredity, surgery and laws of human sterilization, *vide* Landman, J. H., *Human Sterilization*: New York, Macmillan Co., 1932.

eloquence and sometimes with comparatively little evidence by our pessimistic eugenicists of the impending self-destruction of humanity because of the presence in our midst of the mentally diseased such as the manics and the dementia præcoxes; the dependents such as the deaf, the deformed and the blind; the delinquents such as the wayward and the criminals; the mentally deficient such as the morons and the idiots, the degenerates such as the sadists and drug fiends; and the infectious such as the tuberculous and the syphilitic.³

The optimistic eugenicists are much more hopeful. They contend that the socially inadequate people in society are not multiplying more rapidly now than in the past, and that in the normal curve of distribution of our population we must always expect about ten per cent of our people to be socially unadjusted or maladjusted. They believe that modern society needs these people to perform the less intellectual and automatic work of our mechanical age. They urge that the actual number of these unfortunates has not increased and that the statistical increase is only apparent due to a more critical and better diagnosis of these unsocial people and to a more frequent institutionalization of them.⁴

Among the several remedial measures such as restrictive marriage laws, infanticide and others, alarmist eugenicists advocate compulsory human sterilization. Their *raison d'être* for this type of legislation is that many of these unsocial people have inherited their insufficiencies and are cacogenic, that is, potential parents of socially inadequate offspring, and the sterilization of them would necessarily prevent their propagation.

Whether one be an optimistic or an alarmist eugenicist, one cannot ignore the gravity of the constant presence of the social incompetence which is undermining our community. The average number of patients in the hospitals of the United States in 1932 was 775,396.⁵ The total number of patients in the state hospitals for men-

³Wiggam, A. E., *New Decalogue of Science*. Indianapolis: Bobbs-Merrill Co., 1923; Huntington, E. and Whitney, L. F., *Builders of America*, New York: Wm. Morrow Company, 1927; Stoddard, T. L., *Revolt Against Civilization*, New York: Scribner and Sons, 1922; Grant, M., *Passing of the Great Race*, New York: Scribner and Sons, 1921.

⁴Balch, W. M., *Is the Race Going Downhill?* (1926), 8 *American Mercury*, 432-8; Chase, S., *Men and Machines*, New York: Macmillan Company, 1929; Pear, T. H., *Fitness for Work*, London: University of London Press, 1928; Pound, A., *The Iron Man in Industry*, Albany: W. C. Little and Co., 1922; Elkind, H. B., *Epidemiology of Mental Disease* (1927), 6 *American Journal of Psychiatry*, 623-640.

⁵Hospital Service in the United States (1932), 98 *Journal of the American Medical Association*, 2063-2141; U. S. Bureau of Census, *Patients in Hospitals for Mental Disease, 1923*, Washington: Government Printing Office, 1926;

tal diseases at the end of 1930 was 323,688, a larger proportion than for any other group of institutions.⁶ The total number of patients in nervous and mental hospitals increased by 11,555 during the year 1930.⁷ The chance of any one going insane whether one be committed or not, is at least 1 in 10 at the present time.⁸ There were 64,253 feeble-minded and epileptics in state institutions in 1929.⁹ The state prisons had 116,670 inmates in 1930 and the federal prisons had 13,473 in 1931.¹⁰ Between February 1 and September 30, 1932, as many as 207,694 arrests were made.¹¹ Persons committed to prisons throughout the United States in 1931 numbered 70,966.¹² The Government is inclined to the opinion that there were not more than 100,000 narcotic drug addicts in continental United States in 1932.¹³ According to the census of 1930 there were 63,489 blind and 57,084 deaf mutes in our country.¹⁴ It is estimated that there are 10,000,000 or more of socially inadequate people who are a constant menace to our country and race.¹⁵ These people include the mentally defective, the mentally diseased, the physically defective, such as the blind, the deaf, the crippled and those ailing from heart disease, kidney disease, tuberculosis and cancer. These people might well be sterilized, the more ardent eugenicist advocates, because of their potential parentage of socially inadequate children and because of their inability to rear their children properly.

Eugenic and therapeutic sterilization is distinctly a modern movement, though it had been employed as a punitive measure as remote as the civilizations of the ancients. Twenty-seven states may legally

U. S. Bureau of Census, *Mental Patients in State Hospitals, 1926 and 1927*, Washington: Government Printing Office, 1930.

⁶*Ibid.*, note 5. *Mental Patients in State Hospitals, 1928*, U. S. Department of Commerce, Washington, D. C., 1931.

⁷*Ibid.*

⁸Pollock, H. M. and Malzberg, B., *Expectation of Mental Disease* (1928), 2 *Psychiatric Quarterly*, 549-579; Ogburn, W. F., and Winton, E., *Frequency and Probability of Insanity* (1929), 34 *American Journal of Sociology*, 822-831.

⁹*Feeble-minded and Epileptics in State Institutions, 1928*, Washington: Government Printing Office, 1931.

¹⁰U. S. Bureau of Census, *Prisoners in State and Federal Prisons and Reformatories, 1927*, Washington: Government Printing Office, 1931; *World Almanac, 1933*, p. 361.

¹¹*Bulletin of the United States Bureau of Investigation, Washington: Government Printing Office, Oct., 1932.*

¹²*Ibid.*, note 10.

¹³*World Almanac, 1933*, p. 361.

¹⁴*Ibid.*, p. 366.

¹⁵Popenoe, P., *Number of Persons Needing Sterilization* (1928), 19 *Journal of Heredity*, 405-410.

practice human sterilization in the United States today.¹⁶ Sixty-four different human sterilization acts have been enacted since the legal inception of the movement in this country in Indiana on March 9, 1907. The first human sterilization act was introduced in 1897 in the Michigan legislature but it failed to be enacted. However, about 12,145 individuals have already been sterilized under the onus of this legislation. H. H. Laughlin estimates that 15,156 people have been sterilized by December 1, 1931.¹⁷

Our country has been the pioneer in this movement and is today the foremost champion and advocate of the cause in the world. In 1928 the province of Alberta in Canada, in 1929 Denmark, Finland, and the Canton of Vaud in Switzerland, in 1932 the state of Vera Cruz in Mexico, and on July 26, 1933, Germany espoused the cause. These foreign governments are the only other governments that have adopted this legislation. Sweden, England, Norway and Western Australia are seriously considering adopting this social therapeutic agent at the present time.

- ¹⁶Alabama General Laws, 1919, Act No. 704, Sec. 10; 1923, Act No. 568, Sec. 13.
 Arizona Acts, 1929, Chapter 44.
 California Statutes, 1913, Chapter 363; 1917, Chapter 489; 1916, Chapter 776.
 Connecticut Statutes, 1918, Chapter 137, Secs. 2691-2692; 1918, H. B. No. 559.
 Delaware Laws, 1923, Chapter 62; 1929, Chapter 245; 1929, Chapter 246.
 Idaho Laws, 1925, Chapter 194; 1929, Chapter 285.
 Indiana Laws, 1927, Chapter 241; 1931, Chapter 50.
 Iowa Acts, 1929, H. F. 243.
 Kansas Session Laws, 1917, Chapter 299.
 Maine Laws, 1925, Chapter 208; 1929, Chapter 6; 1931, Chapter 275.
 Michigan Acts, 1929, Act. No. 281.
 Minnesota Laws, 1925, Chapter 154.
 Mississippi Laws, 1928, Chapter 294.
 Montana Laws, 1923, Chapter 164.
 Nebraska Laws, 1929, Chapter 163.
 New Hampshire Laws, 1929, Chapter 138.
 North Carolina Laws, 1933, House Bill 1013.
 North Dakota Laws, 1927, Chapter 263.
 Oklahoma Laws, 1931, Chapter 26, Article 3.
 Oregon Laws, 1923, Chapter 194; 1925, Chapter 198.
 South Dakota Laws, 1917, Chapter 236; 1921, Chapter 235; 1925, Chapter 164; 1927, Chapter 118.
 Utah Laws, 1925, Chapter 82; 1929, Chapter 59; 1929, Chapter 75.
 Vermont Acts, 1931, No. 174.
 Virginia Laws, 1924, Chapter 394.
 Washington Session Laws, 1921, Chapter 53.
 West Virginia Acts, 1929, Chapter 4.
 Wisconsin Session Laws, 1913, Chapter 693.

¹⁷Personal investigation and Brown, H. B., *Eugenic Sterilization in the United States*, in the *Annals of the American Academy of Political and Social Science*, Philadelphia, May, 1930, Publ. 2380. Laughlin, H. H., *Eugenic Sterilization*, 1932 (1932) 17 *Eugenical News* 112.

There are four landmark court decisions in the United States on human sterilization legislation that bring up for critical review the whole question of eugenic theory and the constitutionality of such legislation, i. e., the *Buck v. Bell*,¹⁸ the *Davis, Warden v. Walton*, the *Board of Eugenics v. Troutman*, and the *Brewer v. Valk* cases.¹⁹

In the first case, the United States Supreme Court held unequivocally that the Virginia law,²⁰ authorizing the sterilization of mental defectives and others, under careful safeguards, is not void under the Fourteenth Amendment to the Federal Constitution, since it does not deny due process of law for Carrie Buck was given an adequate trial, and since it does not deny equal protection of the law for she was not discriminated against arbitrarily as over against similar people who are at liberty and are a greater menace to society.

The statute in question provides that the superintendents of the state institutions for incompetents may advise the surgical sterilization operations of vasectomy or salpingectomy for the best interests of the patient and society. The operation, however, shall not be performed unless a board of experts prescribes the same, at which time the patient may defend himself or herself. Appeal may be had to the higher courts of the state.

This *Buck v. Bell* decision was the first United States Supreme Court decision on this all important social program. With its declaration of the constitutionality of the Virginia sterilization statute on May 2, 1927, it was not long before many states introduced similar legislative bills, a large number of which were enacted, and the Kansas and Idaho supreme courts upheld their state laws by virtue of it.²¹

The *Davis, Warden v. Walton* decision of the supreme court of Utah on April 9, 1929, is even more significant.²² It upheld the constitutionality of the Utah statute of 1925 and its amendments of

¹⁸*Buck v. Bell* (1927) 47 Sup. Ct. Rep. 584; 274 U. S. 200.

¹⁹*Davis, Warden v. Walton* (1929) 276 Pac. 921; *Board of Eugenics v. Troutman* (1931) 299 Pac. 668; *Brewer v. Valk* (1933) 204 N. Car. 186.

²⁰Virginia Laws, 1924, Chapter 394.

²¹In 1928—Mississippi.

In 1929—Arizona, Delaware, Idaho, Iowa, Maine, Michigan, Nebraska, New Hampshire, North Carolina, Utah, and West Virginia.

In 1931—Vermont, Oklahoma, Indiana, Maine.

In 1932—Louisiana.

Kansas v. Schaffer (1928) 270 Pac. 604; *Board of Eugenics v. Troutman* (1931) 299 Pac. 668.

²²*Supra*, note 19.

1929.²³ The Utah laws provide for the sterilization of sexual criminals, idiots, epileptics, imbeciles and insane. The superintendent of a state institution for dependents may petition the special board of directors of his institution that certain inmates be sterilized for eugenic or therapeutic reasons. The special board must conduct a hearing to determine the merits of the petition. The inmate and his or her legal representative are given thirty days' notice in which to prepare his or her defense. The special board may, after the deliberation, affirm or disaffirm the request of the superintendent. To safeguard all the rights of the inmate, he or she is entitled to an appeal to the circuit court of the county and even to the supreme court of the state.

The court held that the Utah sterilization laws were constitutional but that Esau Walton should not be sterilized, nevertheless. It was comparatively easy to prove the constitutionality of the Utah statutes since the *Buck v. Bell* decision of the Federal Supreme Court, upholding the constitutionality of the Virginia law, served as a precedent. That the law should not be enforced in this instance, the court argued that, judging from the facts in the transcript of record, Esau Walton was a thief and a sodomist. Both of these charges against him are behaviors that he had acquired or learned and not inherited. They can be remedied by a re-education and a reconditioning.

If sterilized and paroled the operation itself would not preclude him from committing larceny and practicing sex crimes. If sterilized and not paroled, then the operation is superfluous since under proper supervision he can be prevented from practicing sodomy and certainly larceny.

This decision stands for the proposition that, although the modern sterilization laws are constitutional, they shall be enforced only in those instances where the patient has inherited his insufficiency and will in all likelihood transmit it to his or her offspring.

The entire question of eugenics was once again aired in the courts when the supreme court of Idaho on May 20, 1931, handed down its decision in the *Board of Eugenics v. Troutman* case. The record disclosed that the patient was twenty-six years of age, physically normal, with normal sex desires but that mentally he had the intelligence of a child of four or five years of age. His mother, father, five brothers and six sisters were all feeble-minded and had

²³Laws of Utah, 1925, Chapter 82; Laws of Utah, 1929, Chapters 59 and 75.

been at times institutionalized. His mother's sister was the mother of seven children, three of whom were feeble-minded and committed to institutions. One of these is the mother of ten more, all of whom are in various children's homes and are defective. The patient himself attended the public schools for three months. In 1916 he was committed to the North Idaho Sanitarium, and in 1918 was transferred to the State School and Colony of Nampa.

The Idaho human sterilization statutes provide for a state board of eugenics to make inquiries into hereditary degeneracy in the state. It is authorized to initiate proceedings with a view toward the eugenic and therapeutic sterilization of all feeble-minded, insane, epileptics, habitual criminals, moral degenerates, and sexual perverts, who are a menace to society. The statutes provide adequate court review by making appeal possible to the district court and to the supreme court of the state, in the event the patient refuses to consent.

Every major legal point in the whole field of human sterilization was contested. The court, however, held that the Idaho statutes did not constitute arbitrary and discriminatory class legislation, did not provide cruel and unusual punishment, and did not deny the defendant due process of law. Albert Troutman was sterilized.

What distinguishes this court decision from the *Davis, Warden v. Walton* decision is that in the former decision the record showed that the patient was afflicted with a native hereditary type of feeble-mindedness, a condition which was established to the court's satisfaction. Hence Albert Troutman was sterilized but Esau Walton of the latter case was not sterilized.

The judicial history of the human sterilization legislation is interesting. In nine instances the constitutionality of the acts have been upheld, once in the Federal Supreme Court, as indicated and eight times in the higher state courts.²⁴ In the eight cases in which the respective state human sterilization laws were declared unconstitutional, they were deemed unconstitutional because they denied due process of law and therefore constitute a violation of the Fourteenth Amendment to the Federal constitution in four cases,²⁵ because they denied equal protection of the laws to all classes of people and there-

²⁴ *State v. Feilen* (1912) 70 Wash. 65; *State v. Schaffer* (1928) 270 Pac. 604; *Smith v. Command* (1925) 231 Mich. 409; *In re Salloum* (1926) 236 Mich. 478; *Buck v. Priddy* (1925) 143 Va. 210 (Circuit Court of Amherst County); *Buck v. Priddy* (1925) 143 Va. 210; *Buck v. Bell* (1927) 47 Sup. Ct. Rep. 584; *Davis v. Walton* (1929) 276 Pac. 921; *Board of Eugenics v. Troutman* (1931) 299 Pac. 668.

²⁵ *William v. Smith* (1921) 190 Ind. 526; *Davis v. Berry* (1914) 216 Fed. 413; *Cline v. Oregon State Bd. of Eugenics* (Dec. 13, 1921) Circuit of Marion County; *Brewer v. Valk* (1933) 204 N. Car. 186.

fore constitute a violation of the Fourteenth Amendment to the Federal Constitution in four cases,²⁶ because the treatment was a cruel and unusual punishment and therefore constitutes a violation of their respective state constitutions in two cases,²⁷ and because the legislation was a bill of attainder and therefore constitutes a violation of Article 1, Section X, of the Federal Constitution in one case.²⁸

On February 8, 1933, the supreme court of North Carolina rendered its state human sterilization law unconstitutional in the *Brewer v. Valk* case.²⁹ By this decision the human sterilization movement suffered a legal setback. The court held that the North Carolina statute was illegal in that Mary Brewer had been denied due process of law. In reality she was given adequate opportunity to defend herself at the trial court of specialists which recommended sterilization. However, if ever there was an instance where the practice of human sterilization might have been abused it was in this case. The wildest eugenicist could not honestly deduce from a study of the record that Mary Brewer has a bad inheritance though perhaps the social worker's report of the case might well substantiate such a contention. The record discloses that "Mary Brewer was born in Greensboro, in 1905. She was the oldest of a family of 12 children, one of whom died of meningitis. She went to work at the age of ten in a hosiery mill, from there to a cigarette factory and then to a knitting mill. Mrs. Brewer states that before Margaret was born she went hungry often, and that the family are often hungry now. She married early in life, and is the mother of five children." As to the husband and father, it is reported that he rarely worked and at times drank and gambled. There is absolutely no evidence in the record to indicate that Mary Brewer has a bad inheritance. It might well be concluded from the testimony that society is at fault. The Brewer family is dependent on the support of the state; but not because of a bad inheritance. What Mary Brewer needed was some sound birth control advice earlier in her married life. Furthermore, society should be so constituted that there should be no lack of employment for those who want it. It might well be that the court

²⁶*Smith v. Bd. of Examiners* (1913) 85 N. J. L. 46; *In re Thomson* (1918) 169 N. Y. Supp. 638; *Osborn v. Thomson* (1918) 171 N. Y. Supp. 1094; *Haynes v. Lapeer* (1918) 201 Mich. 138.

²⁷*Mickel v. Heinrichs* (1918) 262 Fed. 688; *Davis v. Berry* (1914) 216 Fed. 413.

²⁸*Davis v. Berry* (1914) 216 Fed. 413.

²⁹*Brewer v. Valk* (1933) 204 N. Car. 186.

declared the North Carolina statute illegal because it could not see a virtuous woman sterilized for no good reason.

On April 5, 1933, the legal defects and thus the biologic weaknesses of the North Carolina human sterilization law were eliminated by an amendment.³⁰ ♪

³⁰North Carolina Laws, 1933, House Bill 1013.