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Sterilization of Criminals

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STERILIZATION OF CRIMINALS.

(Report of Committee H of the Institute.)¹

JOEL D. HUNTER, Chairman.

[The disposition and discussion of this report will appear in the next issue.—Ed.]

In this day when one hears the authorities in medical science, in criminology, in ecclesiastical endeavor and in the social sciences changing their emphasis from cure and reform to prevention, it behooves one to know what has been done and what issues are involved in the effort to prevent a further increase in criminality by the sterilization of criminals.

Your committee on the sterilization of criminals in its preliminary report wishes to present:

I. A summary of the existing sterilization laws.

II. A statement of the main issues involved.

I. Summary of existing sterilization laws:

The first sterilization law was passed in Indiana in the spring of 1907. Since that time similar laws have been passed and approved in eleven other states, in two of which they have been declared unconstitutional.^{1½} Bills authorizing sterilization have also been passed in four states, but have been vetoed. In one of these four states² a bill was subsequently passed and approved, and was later revoked by referendum. In seven other states bills were introduced, but were defeated in the legislatures. An excellent and complete report on all those bills is given in Bulletin 10B of the ³Eugenics Record Office, entitled "The Legal, Legislative and Administrative Aspects of Sterilization." This committee wishes to recommend the reading of the report and to thank the committee of the Eugenics Record Office for their courtesy in permitting the use of their information.

Only the twelve laws which have been passed and approved will be considered in this preliminary report. The twelve states which have passed these laws are ⁴Indiana, Washington, California, Connecticut,

¹The personnel of this committee is as follows: Joel D. Hunter, chief probation officer, Chicago, chairman; Judge E. J. Gavigan, Criminal court, N. Y. City; Hon. W. W. Foster; Dr. W. A. White, Hospital for Insane, Washington, D. C.; Dr. T. D. Crothers, Hartford, Conn.; Bleecker Van Wagenen, N. Y. City; H. H. Hart, N. Y. City; Prof. J. W. Melody, Catholic Univ., Washington, D. C.; Dr. H. C. Sharpe, West Baden, Ind.; Dr. W. T. Belfield, Chicago; Father P. J. O'Callaghan, Chicago; H. H. Laughlin, Cold Spring Harbor, L. I.

^{1½}Iowa and New Jersey. In New Jersey the act was held unconstitutional with reference to epileptics alone and an appeal may be taken from the decision of the Supreme Court to the Court of Errors and Appeals.

²Oregon.

³Feb., 1914, Cold Spring Harbor, L. I., N. Y.

⁴The dates of approval of the statutes and the citation of places where they may be found are in Table A, Bulletin 10B of the Eugenics Record Office.

STERILIZATION OF CRIMINALS

Nevada, Iowa, New Jersey, New York, North Dakota, Michigan, Kansas and Wisconsin.

In summarizing the sterilization laws of these states, the material is divided as follows:

- (A) Persons subject to the law.
- (B) Officials entrusted with the enforcement of the law.
- (C) Basis of selection and procedure.
- (D) Type of operation.
- (A) Persons subject to the law:

Ten of the twelve states provide for the inmates of the state prisons and the state hospitals for the insane, and of certain other state institutions coming under the provisions of the sterilization laws. The other laws, those of Nevada and Washington, provide that the court may order an operation whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal. These two laws make no mention of the inmates of state institutions.

Habitual criminals, confirmed criminals, or persons guilty of some particular offense, are mentioned in all the statutes except that of Michigan, which includes only the mentally defective or insane inmates of institutions maintained wholly or in part at the public expense. In one statute, that of Kansas, an habitual criminal is defined as "a person who has been convicted of some felony involving moral turpitude." In most of the statutes the epileptic, the insane, and the idiotic inmates of state institutions are specified as coming under the provisions of the law. The list of Iowa is the longest. It includes the inmates of public institutions for criminals, rapists, idiots, feeble-minded, imbeciles, lunatics, drunkards, drug fiends, epileptics, syphilitics, moral and sexual perverts, and diseased and degenerate persons. In that state sterilization was compulsory for persons twice convicted of felony, or of a sexual offense other than "white slavery," for which offense one conviction made sterilization mandatory. The Iowa law was declared unconstitutional on June 24th, 1914.⁵

- (B) Officials entrusted with the enforcement of the law:

If most of the habitual criminals, epileptics, insane and feeble-minded in the public institutions in twelve states of the Union may be sterilized, it is important to note to whom the authority for the enforcement of these laws has been given. In two states, Washington and Nevada, no official is specified; the court passing sentence may

⁵On August 31st this decision had not yet been published in the Federal Reporter. A report may be found in the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Vol. V, No. 3, p. 419.

also order an operation to prevent procreation; in neither of these is anything said about the person to perform the operation, nor about any committee to examine into the case previous to the giving of the order. In the ten other states, the inmates to be sterilized are selected by boards or commissions. In only one state out of the ten, Kansas, the board must submit its findings to a court of competent jurisdiction, and receive the order of the court before the operation for sterilization can be performed. In New York and New Jersey, if the orders of the Board of Examiners are disputed, they are subject to review by the Supreme Court or any justice thereof. In Michigan, when the parents or guardian object to the performance of the operation, provision is made for the reference of the question of sanity to the Probate Court. In the six other states, the boards or commissions are given final authority. Each of the ten laws which provides for the creation of a board, states what the membership of the board shall be. In every instance a physician or surgeon is required. Neurologists are mentioned in two, and an alienist in one. On all the boards the chief medical officers or the chief executives of the institutions, the inmates of which are subject to sterilization, are given places. The boards vary in size, and are all appointive.

(C) Basis of selection and procedure:

Inasmuch as such great power is given to these commissions, it is interesting to note what limitations are made concerning the selection of inmates to be sterilized, and what the form of procedure is in making the selections. In Nevada and Washington, the laws provide for the selection of individuals to be sterilized by the courts which pass sentence. In both these states it is optional with the court to enter the order. In neither state is any provision made for any investigation of the mental and physical condition of the individual, nor of his personal history, nor of his heredity. No operations have been performed in either of these states.

In New York and New Jersey, the original order for sterilization is made by a board of examiners, but in either case these orders, if questioned, are subject to the review of the Supreme Court or any justice thereof. In both these states an investigation of the case is compulsory; the New Jersey statute requiring an investigation into the mental and physical condition of the person to be sterilized and the New York statute being so worded that the mental and physical condition, the record, and the heredity must be looked into. In New Jersey, it is optional with the board of examiners to order the operation if a certain defect is found, but in New York it is compulsory to

STERILIZATION OF CRIMINALS

order it. No operations have been performed in either state, and the law has been declared unconstitutional in New Jersey.⁷

In Michigan, the original order is given by the management of the institution with expert medical advice if there is no physician at the head of the institution. When there is a dispute concerning insanity, the matter must be referred to the probate court. An investigation covering the mental and physical condition of the inmate, his or her record and heredity, is compulsory, and the operation is compulsory provided it is found that the inmate would have defective offspring or that the operation would be of benefit to the inmate.

In Kansas, the recommendation of a person for sterilization is made by the managing officers of the state institutions to a court of competent jurisdiction, and the final order is made by the court. An investigation of the mental and physical condition of the inmate, and of his history, is compulsory, and the operation must be performed if ordered by the court. No operations have been performed.

In the six other states, Indiana, California, Connecticut, Iowa, North Dakota and Wisconsin, the final authority is given to the board or commission. In four of them an investigation is compulsory, and in two it is optional. In four, the performance of the operation is optional if certain defects are found, and in two, Connecticut and Iowa, it is compulsory. In Connecticut, if it is found that procreation is inadvisable or that the person would improve materially from the operation, then the operation is compulsory. In Iowa, the operation is compulsory if it is found that the inmate would have defective offspring, or would improve materially from the operation. Operations have been performed under the requirements of the law in Indiana, California, and Connecticut.^{7½} None have been performed in Iowa, North Dakota, or Wisconsin, and the law has been declared unconstitutional in Iowa.

(D) Type of operation:

Under this summary of the laws, one other point needs to be considered, namely, the type of operation authorized. In six of the states, no special type of operation is provided for. In them the choice

⁷88 Atlantic Reporter, 963.

^{7½}Following are the sources of information which show that operations have been performed in three states. The committee hopes to obtain funds to make an intensive study of many of these cases.

Letter on file with committee records from J. M. Hurty, M. D., Sec., Ind. Board of Health.

Letter from Dr. F. W. Hatch, Gen. Supt., Cal. State Hospital, to Eugenics Record Office, on page 83 of Bulletin 10B of the Eugenics Record Office.

Letter from Dr. H. M. Pollock, Supt., Norwich State Hospital, to Eugenics Record Office, quoted on page 85 of Bulletin 10B of the Eugenics Record Office.

of operation is left to the board or commission. Of these six, the Wisconsin and Indiana laws provide that that operation shall be decided upon which is safest and most efficient, and New York and New Jersey provide for the operation which would be the most effective. Of the other six states, California authorizes asexualization; Nevada any operation except castration; Connecticut vasectomy, oophorectomy in a safe or humane manner; Iowa, vasectomy or salpingectomy; Michigan, vasectomy or salpingectomy in a safe and humane manner, or improvements thereon less dangerous to life; and Kansas, vasectomy or oophorectomy in a safe and humane manner.

II. A statement on the main issues involved:

It is well at this point to state in brief the main issues which are involved, and which must be considered in relation to laws which authorize and legalize sterilization.

The main issues to be determined are:

- (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?
 - (b) Is sterilization more efficient in removing people with defective germ plasma 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 its consideration of the above issues the committee seeks here merely to state some of the opinions that have been publicly expressed, and to set forth the things which must be proven before it is advisable or right to advocate the sterilization of criminals.

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

Under this heading two questions must be answered:

A. Are criminal traits, as such, heritable?

It is necessary to quote only a few sentences to show that there is as yet no agreement concerning the answer to this question. Several of the quotations given below are statements of opinions. These opinions differ partly because those who express them have had different material to work with. For example, Drs. Healy and Spaulding worked with juvenile delinquents, of whom all the girls were under

STERILIZATION OF CRIMINALS

eighteen years of age, and the boys under seventeen; while Dr. Charles Goring examined English convicts, many of whom were hardened and confirmed criminals. In several instances the committee has been unable to ascertain the facts upon the basis of which the opinion quoted was rendered. Such opinions are included in this report to show that the committee does not find an agreement in the writings which it has had at its disposal.

Dr. McKim: "Crime cannot be hereditary, but merely the tendency to crime."⁸

Drahms: "The burden with which the congenital offender comes already laden, and from which he draws his inspirational forces, is purely congenital. It is the product of entailed inheritance from ancestral germ plasms * * * even inoculating that new life with the very germs of theft and murder already stirring in the flood of its progenitors ages back."

Charles V. Carrington: "I am unreservedly of the opinion that sterilization of our habitual criminals is a proper measure."⁹

Drs. Edith R. Spaulding and William Healy: "In the 1,000 cases we have reviewed, we have carefully sought for evidence of direct inheritance of criminalistic traits, as such. However, in no one case of the 1,000 have we been able to discover evidence of anti-social tendencies in succeeding generations without also finding underlying trouble of a physical or mental nature, or such striking environmental faults or mal-adjustments as often develop delinquency in the absence of defective inheritance."¹⁰

The problem presented by this question is well summarized by Dr. Henry H. Goddard in an article in Bulletin 13, of the *American Academy of Medicine*:

"In the writer's opinion, it is a serious mistake that the question of criminality has been brought into the matter at all. There is no agreement among criminologists that criminality is hereditary. Indeed that theory is losing ground. Criminality is not born; it is made. The easiest material out of which to make criminals is feeble-mindedness. Therefore if we could make our law apply to the feeble-minded and say nothing about the criminal, we would get under that head probably all of the criminals that need to be considered."

(B) If criminal traits are not heritable, nevertheless, are feeble-mindedness, epilepsy, insanity, imbecility, alcoholism, syphilis and other characteristics and diseases, mentioned in the sterilization statutes, heritable, or any of them, so that the amount of criminality in

⁸Quoted in "Responsibility for Crime" by Philip A. Parsons, Studies in History, Economics and Public Law, edited by Faculty of Political Science at Columbia University, Vol. 34.

⁹*Virginia Medical Semi-Monthly*, Vol. 13, p. 389.

¹⁰*JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY*, Vol. IV, p. 837.

the next generation would be decreased if people possessed of the above qualities or any of them should be sterilized?

In the quotation given at the end of the last paragraph from Dr. Goddard it is stated that "the easiest material out of which to make criminals is feeble-mindedness." Dr. Alfred Gordon, in the *JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY* for March, 1914, states that "The collected facts show that alcoholic individuals procreate degenerate and feeble-minded children."

In a report concerning 2,000 inmates of Elmira Reformatory,¹¹ Dr. Wade Robertson says, "In antecedents, insanity, epilepsy, defectiveness, nervous disorders, alcoholism, syphilis, tuberculosis and drug habits we found to be frequent and common factors."

Drs. Spaulding and Healy in their above cited article on "Inheritance as a Factor in Criminality," state that "all told, the indirect influence of heredity on criminalism in our cases appears to be that in 35 per cent there is predominantly a transmission of mental or physical defect, and that in 9 per cent such inheritance is partly responsible. This makes a total of 44 per cent in which bad heredity is indirectly responsible for crime."

The Eugenics Record Office, in its Bulletin 10A, include the following classes in the cacogenic varieties of the human race: 1, feeble-minded; 2, the pauper class; 3, the inebriate class; 4, the criminalistic class; 5, the epileptic class; 6, the insane class; 7, the constitutionally weak, or asthetic class; 8, those predisposed to specific diseases or the diathetic class; 9, the physically deformed class; 10, those with defective sense organs, as the blind and the deaf, or the cacaesthenic class.

The bulletin also states that "For a long time students of human society have practically agreed that along with the circumstances of environment, the anti-social individuals of the human race originate to some degree from innate characteristics." Dr. Charles Goring in his recent work on "The English Convict"¹² states: "The influence of parental contagion * * * is on the whole inconsiderable, relatively to the influences of inheritance and of mental defectiveness; which are by far the most significant factors we have been able to discover in the etiology of crime."

Leaving the question as to whether or not sterilization is morally, socially or legally permissible to be considered later, it must be stated here that it is granted by most authorities that the sterilization of individuals possessed of the traits mentioned in the question, and in whose cases the defect would be heritable, would reduce the amount of criminality in the next generation.

¹¹*American Journal of Medicine*, Vol. 16, p. 349.

¹²Parliamentary Bluebook, London, 1914.

STERILIZATION OF CRIMINALS

Concerning our ability at the present time to ascertain those who should be sterilized, Dr. A. White says:¹³

"A word in this connection with regard to negative eugenics. There has been a tendency of recent years to pass laws providing for the sterilization of certain classes of defectives and delinquents in the community. The casual reading of this chapter up to the present point I think will convince anyone that we are not yet in a position to assume any such responsibility. The amount of knowledge of the ancestors of any individual that would make it scientifically justifiable to sterilize him is an amount that is rarely obtainable, and so far as I know where this work has been done, there has been little or no effort to obtain that knowledge, whether its desirability was or was not appreciated. The only conditions where this method of procedure might theoretically be justifiable with a minimum amount of knowledge would be conditions in which the disorder from which the person suffered was dominant, and therefore, of necessity would be transmitted to the progeny. We must remember, however, that even in dominant traits, union with a healthy person may produce a certain proportion of healthy children, and unless there are going to be at least two children, no prediction is justifiable. If the mating were productive of only a single child, as so many matings are in these days, there is no reason why that child should not be the well child instead of the sick child, and if well it might grow up to useful citizenship. To take the responsibility of interfering at this point and preventing such an issue is a very grave matter, and warrants a much profounder knowledge of the subject than we can claim at present.

"On the other hand, if the trait is recessive, only a very careful examination of the ancestry will make that clear. Then only rarely will it be anything more than a probability. To sterilize such a person is a still graver responsibility, for mating with healthy stock here will eliminate the disease without even any sick progeny as the price. I cannot be too emphatic in my denunciation of the type of legislation here referred to."

In cases in which it is a certainty that all the offspring of an individual will be defective, that individual is certain to possess traits which make him a social menace, even though he were sterilized. In cases in which there is only a probability that a certain number of the offspring will be defective the traits of the individual are such that the individual is often felt not to be a social menace in other ways. It is this latter class that makes the problem so difficult. The students of heredity do not make an exact prognosis in these cases concerning the offspring, and yet they are certain that some will be defective. What is to be done? Should a person be sterilized when the probabilities are that he will have three defective children and one normal one? On the other hand, is it right for the state to allow a man to procreate who

¹³"Nervous and Mental Diseases," Chap. I, pp. 51 and 52.

is certain to have a proportion of his offspring defective, or feeble minded, and more than likely criminal?

Concerning the criteria for determining upon sterilization, the Eugenics Record Office says on page 108 of Bulletin 10B:

"As the science of heredity advances it is clear that in certain, even recessive, traits the somatic characteristics of an individual constitute an index, within certain limitations, of such person's germ plasm. * * * When the facts concerning human heredity become more definitely formulated, it may be found wise in the interests of speedy procedure to prescribe by law and rules governing and evaluating the evidence of sufficient proof of potential parenthood of defectives, but at present it would seem wise to omit such, and to require in the interests of double surety the extended investigation called for by the model statute." (The model statute is in the appendix to this report.)

(2) The Surgical Problem:

If the state is to authorize sterilization, it is important to consider for a moment the different types of operations which are possible. The surgical problem will be considered under the following heads:

(a) A statement of the different types of operation for both males and females.

(b) Intrinsic advantages of the different types.

(c) Consequential advantages.

(a) Different Types of Operation:

Dr. William Belfield states¹⁴ that the "sterilization of an individual can obviously be accomplished by either of two methods: 1. The removal of the glands which furnish the procreative elements (testes and ovaries, respectively), (castration and ovariectomy), and, 2, the occlusion of the canal which these elements must traverse (vas deferens and Fallopian tube, respectively), (vasectomy and salpingectomy), before coalescence with the opposite sex element can occur." In addition to the above methods Dr. J. Hall-Edwards of the X-ray department of the General Hospital, Birmingham, Eng., states¹⁵ that "Experimental investigation has taught us that in the X-rays we have an agent which can bring about changes in the sexual organs that complete sterilization results."

(b) Intrinsic Advantages of the Different Types:

Concerning the danger to the life of the individual operated upon, Dr. Belfield¹⁶ says:

"Sterilization of the human male is an exceedingly simple, and entirely safe procedure. Since the minute tube (vas deferens) which

¹⁴Letter on file with committee records.

¹⁵*British Medical Journal*, 1912, Vol I, p. 1216.

¹⁶Letter on file with committee records.

STERILIZATION OF CRIMINALS

conducts the spermatozoa from each testis lies for several inches of its length just below the skin of the scrotum, it is very easily secured and occluded. * * * The man is effectively sterilized without pain, danger of infection or impairment of any function whatever, except the passage of spermatozoa through the severed vas. No confinement to bed or home is entailed thereby. The enclosure of the Fallopian tubes within the body makes the sterilization of a woman a more serious and elaborate procedure. Whether the tubes are reached and tied through the vagina or through the abdominal wall, the possibility of peritoneal infection exists. Although the chance of death, with proper technique, can hardly exceed one in two hundred, yet even this constitutes an argument against the procedure in women (salpingectomy) which does not obtain against vasectomy in man."

Father P. J. O'Callaghan writes: "Any operation which destroys the functions of procreation and which has no other immediate purpose than the direct destruction of that function may not have the outward semblance of emasculation, but it has the essential and intrinsic elements of physical violence from which Christianity has recoiled, and against which modern civilization will raise an emphatic voice of protest, when conscious of its significance."

Dr. B. M. Ricketts, in Volume 15, p. 755, of the *Medical Review of Reviews*, states that "Vasectomy sterilizes a man without the slightest impairment of his sexual desire or pleasure."¹⁷

Concerning sterilization by the X-ray, Dr. J. Hall-Edwards says:¹⁸ "In animals this can be done without producing any ill results, or at any rate, any effects which have so far been noticed." In the case of females, however, Dr. Hall-Edwards writes that there is danger of dermatitis.

The operation to remove either the testes or ovaries is more severe than vasectomy or salpingectomy or sterilization by the X-ray, but it is favored by some because of its consequential advantages. These are considered under the next heading.

(c) Consequential Advantages of the Different Types:

Castration and ovariectomy are objected to by Dr. Belfield because "they deprive individuals not only of the power to procreate offspring, but also the power to recreate in full measure their own powers." Both these operations cause sexual impotency as well as sterilization.

On the other hand, J. D. Botkin, the warden of the state penitentiary of Kansas, writes to the committee:¹⁹ "We shall have a small per cent of prisoners confined in the prison here that castration will be of great value to them and to society if it were carried out. * * * Vasectomy would not meet the need of these cases."

¹⁷Letter on file with committee records.

¹⁸*British Medical Journal*, 1912, Vol. II, p. 1216.

¹⁹Letter on file with committee records.

Concerning castration, Mr. F. C. Cave, the superintendent of the Kansas State Home for Feeble-Minded, writes, Vol. XV, page 123, of the *Journal of Psycho-Asthenics*, that "All desire for sexual intercourse and all erotic fancies seem to have been eliminated"; that boys lost all sexual desires and became "impotent" in every sense of the word. Mr. Cave recommends "Testiectomy for the male, because it limits lewdness and vice."

Concerning vasectomy, Dr. Sharpe writes that "There is no cystic degeneration, no disturbed mental or nervous condition following, but, on the contrary, the patient becomes of a more sunny disposition, brighter in intellect, and advises his fellows to submit to the operation for their own good."

When the committee met in June, the members present were unanimously of the opinion that there had not been as yet any thoroughly scientific and intensive research to determine the consequential advantages and disadvantages to the individuals who had been sterilized under the law or else by agreement and consent.

Under this heading it seems best to place the recommendation of the committee that the institute appropriate \$3000.00 to be used in gaining information along these lines. The committee feels that at present it is not possible to state with authority what the physiological and psychical results of sterilization on the individual are, nor can it state its therapeutic value, nor what proportion of the individuals upon whom the operations of vasectomy or salpingectomy have been performed have become a menace to the community. To make a research along these lines the committee asks for an appropriation of \$3,000.

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

Father P. J. O'Callaghan writes to the committee, "I am convinced that even if it were proved to be theoretically permissible to sterilize certain individuals, it would be morally dangerous for the whole community to exercise its right to do so. In the repression of evil tendencies among men, violent lengths are justifiable only in extreme necessity. I doubt if the necessity is extreme which this method promises to relieve. I believe the moral sense of the community will condemn the sterilization of criminals. * * * The whipping post has been discarded, not because it proved ineffective in curing certain evils, but because it degraded the community that sought to cure these by such a method. The instinct which prompts as direct a method of moral cure as possible often tempts us to forget that the end does not justify unworthy means."

In Bulletin 10A of the Eugenics Record Office it is stated that

"It now behooves society, in consonance with both humanitarianism and race efficiency, to provide more humane means for cutting off

STERILIZATION OF CRIMINALS

defectives. Society must look upon germ plasm as belonging to society, and not solely to the individual who carried it. Racial instinct demands that defectives shall not continue their unworthy traits to menace society."

The argument for the defense of sterilization on moral grounds is that the duty of society to protect and preserve itself is higher than its duty to protect and preserve individuals who are a menace to society and who will procreate their own kind. All those consulted by the committee, who oppose sterilization on moral grounds, favor in its stead the remedy of segregation, feeling that the same results can be obtained by that method, which they consider a better one. As there is not a unity of opinion among criminologists as to whether or not criminality is heritable, so neither is there an undivided opinion among theologians as to whether or not it is morally permissible to prevent individuals from procreating their own 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?

Dr. B. M. Ricketts, in Vol. XV, p. 755, of the *Medical Review of Reviews*, writes:

"It is of no special consequence to the criminal to make him sterile; * * * he would become a moral libertine, a menace and a most dangerous individual to even the most virtuous, the moment it became known that he is not a dangerous one to cohabit with so far as causing conception is concerned."

Dr. Sharpe reports²⁰ that a majority of his patients have become of "a more sunny disposition and of brighter intellect," and therefore not a menace to the community. Dr. W. M. Hotchkiss,²¹ the superintendent of the State Hospital for the Insane in North Dakota, states that he has "sterilized eleven males with very good results in all cases." These operations were performed at the request of the individuals and their relatives. Dr. Hotchkiss further writes that two of his patients have written him attributing the greater part of their well-being and good state of health to the operation which was performed on them.

The committee submits the above opinions for consideration. There are many similar expressions of opinion which can be found, all of them based on a certain amount of familiarity with a few cases over a limited period of time. The committee feels that a much more thorough research needs to be made before a satisfactory answer can be given to the question stated at the beginning of this section.

²⁰Bulletin of National Christian League for Promotion of Purity.

²¹Letter on file with the committee records.

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

As stated at the beginning of Chapter III of Bulletin 10A of the Eugenics Record Office, the following methods have been suggested for removing individuals with innately defective strains.

1. Life segregation (or segregation during the reproduction period.)
2. Sterilization.
3. Restrictive marriage laws and customs.
4. Eugenical education of the public and of prospective marriage mates.
5. Systems of matings purporting to remove defective traits.
6. General environmental betterment.
7. Polygamy.
8. Euthanasia.
9. Neo-malthusianism.
10. Laissez-faire.

Whenever any legislative body is considering a bill authorizing sterilization, it should consider it in relation to the other methods that have been suggested. A large majority of the students of the problem feel that sterilization alone can never settle the entire problem of how to rid the country of the individuals with defective strains. Therefore, instead of it being sterilization *or* some other method, it comes to be sterilization *and* several other methods. To quote again from the Bulletin 10A of the Eugenics Record Office:

"To epitomize: Of the several remedies reviewed, segregation and sterilization are the ones deemed by this committee to be most feasible and effective in cutting off from the human population the supply of defectives. Restrictive marriage laws and customs, eugenic education of the public, of prospective marriage consorts, and (in youth) of potential parents, and general environmental betterment, are all eugenic agencies of great value. In this particular problem, however, they rank greatly below segregation and sterilization, although in other social programs they are of prime importance. We condemn neo-malthusianism, because in it we fail to find an agency able to cut off the supply of defectives; but on the other hand, we find it fraught with great danger in that it is more apt to strike at fecundity in our better classes than among degenerates. Systems of matings purporting to remove defective traits, polygamy, euthanasia, and laissez-faire, are condemned unreservedly.

"In the light of studies thus made it is clear that the most promising agency for reducing the supply of defectives in the whole population at a rate making for the ultimate extinction of the anti-social strains, must consist in the segregation of the members of these strains before their reproductive periods, and in the sterilization of such of

STERILIZATION OF CRIMINALS

them as are returned to society at large while still potential parents.
* * * If in such a case objection is made to sterilization, let the particular individual remain under the custody of the state."

The working committee of the Eugenics Record Office (of which Dr. Bleecker Van Wagenen was chairman and Mr. H. H. Laughlin secretary, both of whom are members of this committee of the Institute of Criminal Law and Criminology) adopted a positive plan to carry out the suggestions made by their committee. That plan included a Model Sterilization Law. That law and the statement of the Eugenics Record Office committee concerning the "Principles proposed for the Model Sterilization Law" are attached in an appendix to this preliminary report, and to them the careful attention of the members of the Institute is requested.

Dr. Henry H. Goddard in pamphlet No. 12 of the Russell Sage Foundation²² concludes by saying:

"If the individuals that are selected for the operation are never to go out into the world, the operation will be of no very great benefit to society. It will remove a little of the necessary precaution in the institutions. That is of doubtful advantage. But if it is true that many institutions for the feeble-minded have inmates that could go to their homes and be well cared for, their lack of ability to earn a living would be made up by others in the family, and the state would be relieved of the burden. If they are safe from the danger of procreation, this would be a proper procedure. It is also true that our institutions for the insane are so crowded that many cases that are known to be chronic and incurable, and are clearly hereditary, are often allowed to go home during their periods of quietness, and while away from the institution, they become parents of children who inherit their weakness. If the operation was applied to these people, it would save a large percentage of defective inheritance. In the institutions for the feeble-minded, if these people above alluded to could be sent home, others would take their places, could be trained to work, sterilized, and again sent to their homes to be fairly comfortable in those homes. In this way, in the course of time, considerable help could be offered to the solution of this problem, and the burden of caring for so many people for their entire lives in colonies would be, to a certain extent, reduced.

"We thus see that in the present status of the problem, neither one of these plans will solve it at once; but since both are good, and both can contribute somewhat to the solution, the only logical conclusion is that we must use both methods to the fullest extent possible. As we have attempted briefly to show, and as any one can discover for himself if he will give a little time to investigating the conditions, the situation is fast becoming intolerable, and we must seize upon every method that is suggested and offers any probability of helping in the

²²Russell Sage Foundation, 130 East 22nd St., New York city, N. Y.

solution of the problem. In other words, it is not a question of segregation or sterilization, but segregation and sterilization."

Dr. H. C. Sharpe feels that sterilization is preferable to segregation. He says,—"There is no expense to the state, nor shame to the friends of the individual, as there is bound to be in the carrying out of the segregation idea." Robert R. Rentoul favors sterilization as against segregation, stating that the latter is impractical, because it would be too expensive and so many inmates would escape from custody.

Philip A. Parsons concludes his above-cited paper (in Vol. 34 of the *Studies in History, Economics, and Public Law*, edited by the Faculty of Political Science of Columbia University) on "The Responsibility for Crime" by saying that "Segregation is the only satisfactory and practical solution of the problem."

Conditions vary in different states and therefore each state in considering sterilization laws starts from a different position. Whenever any state legislature has before it a bill authorizing sterilization the committee to which the bill is referred should give careful consideration to all the issues involved, and to the different remedies suggested.

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

That some of the chief executives are not willing to trust their own appointees with such power, unless there are many safeguards imposed, is shown by what the Hon. George E. Chamberlain, Governor of Oregon, under date of February 22nd, 1909, wrote in the message²³ sent with his veto of the sterilization bill which had passed the Oregon State Legislature.

"I am not entirely satisfied that all classes named in the act ought to be submitted to such harsh treatment, and if it is to become a law in this state, greater safeguards should be thrown around the unfortunate wards of the state who are mentioned in the act. Without these there might be a terrible abuse of the power attempted to be given those upon whom the duty is devolved."

Many citizens of this country, which is supposed to have a popular government, have a deep distrust of a majority of public officials, due to the fact that there have been so many examples of misgovernment, especially in the large municipalities. Mr. Albert M. Kales, in his book on "Unpopular Government in the United States," states very clearly how our government has become unpopular, and how there are now many "continued, increasingly aggressive and always popular efforts to rid ourselves of extra legal government of politocrates." If such a condition does exist, is it any wonder that there is a popular distrust of

²³Eugenics Record Office, Bulletin 10B, p. 33.

STERILIZATION OF CRIMINALS

a majority of public officials and a lack of desire to grant them any great new power?

The government has again and again failed to initiate a movement to meet some evident community need until the particular movement in question has been proven successful under the support and guidance of private people. This is partly due to the fact that citizens do not wish the government to enter into an untrodden field. In Chicago social settlements and private playgrounds existed for several years before any recreation parks and centers were constructed by the park boards. Also industrial and manual training schools were carried on for several years by private effort before there was any instruction along those lines in the public schools of Chicago. Because of these facts the question arises: Would it not be well for private practitioners who favor it to perform operations to bring about effective sterilization upon those who consent, because if these operations prove worth while the movement will gain a greater popular approval?

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

Under this heading the committee does not attempt to prove that any particular law does or does not infringe upon the constitutional guarantee of the individual, but it does wish to hold itself to the question, "Can any sterilization law be passed without infringing upon the constitutional guarantee of the individual?"

To sentences involving cruel or unusual punishments, there is a fundamental objection based on the constitutional prohibition found in the Federal Eighth Amendment. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The question to be answered is, "Is sterilization a cruel and unusual punishment?" Frederick A. Fanning says²⁴:

"I am inclined to believe that this question must be answered in the affirmative. We must know, or we must be far more certain than we are at present, that sterilization is the only method of eliminating a criminal class in the years to come, and we must have some evidence—which I concede will be very difficult to obtain—tending to show that prospect of sterilization will be a deterrent factor in the mind of one who is inclined to commit rape."

In the case of the *State of Washington, Respondent, v. Peter Feilen, Appellant*,²⁵ the Supreme Court of Washington affirmed the judgment of the lower court. The decision in part reads as follows:

"Cruel punishments, on contemplation of such constitutional restriction have been repeatedly discussed and defined, although we have

²⁴JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, March, 1914.

²⁵No. 70 Wash. 65; 126 Pacific Reporter, 75.

not been cited to, nor have we been able to find, any case in which the operation of vasectomy has been discussed."

"In *State v. Woodward*, 68 W. Va. 66, 69, S. E. 385, a recent and well-considered case which may be consulted with much profit, Brannon, Justice, said:

"The legislature is clothed with power well-nigh unlimited to define crimes and fix their punishments. So its enactments do not deprive of life, liberty or property without due process of law and the judgment of a man's peers, its will is absolute. It can take life, it can take liberty, it can take property for crime. 'The legislatures of the different states have the inherent power to prohibit and punish any act as a crime, provided they do not violate the restrictions of the state and federal constitutions; and the courts cannot look further into the propriety of a penal statute to ascertain whether the legislature had the power to enact it.' 12 Cyc. 136. 'The power of the legislature to impose fines and penalties for a violation of its statutory requirements is coeval with government.' *Mo. P. R. Co. v. Humes*, 115 U. S. 512. The legislature is ordinarily the judge of the expediency of creating new crimes and of prescribing penalties, whether light or severe. *Commonwealth v. Murphy*, 165 Mass. 66; *Southern Express Co. v. Commonwealth*, 92 Va. 66. For such a fundamental proposition I need cite no further authority. * * * What is meant by the provision against cruel and unusual punishment? It is hard to say, definitely. Here is something prohibited, and in order to say what this is, we must revert to the past to ascertain what is the evil to be remedied. Within the pale of due process, the legislature has power to define and fix punishments, great though they may be, limited only by the provision that they shall not be cruel or disproportionate to the character of the offense. Going back to ascertain what was intended by this constitutional provision, the history of the law tells me of the terrible punishment visited by the ancient law upon convict criminals. In our days of advanced Christianity and civilization, this review is most interesting, yet shocking and heartrending."

"The learned jurist then proceeds with the narration of the cruel punishments mentioned in 4 Blackstone, at pages 92, 327, and 377, and after citing and discussing the English Bill of Rights: *Whitten v. State*, 47 Ga. 301; *Aldridge Case*, 2 Va. Cases, 447; *Wilkerson v. Utah*, 99 U. S. 130, 135; *Wyatt's Case*, 6 Rand. 694; *In re Kemmler*, 136 U. S. 436, 446; Cooley, Const. Lim (4th ed.), 408; Wharton, Crim. Law (7th ed.), sec. 3405; *Hobbs v. State*, 133 Ind. 404, 32 N. E. 1019, 18 L. R. A. 774; *State v. Williams*, 77 Mo. 310; *Weems v. United States*, 217 U. S. 349; *O'Neil v. Vermont*, 144 U. S. 323, and other cases, says:

"In short, the text writers and cases say that the clause is aimed at those ancient punishments, those horrible, inhuman, barbarous infictions."

"*In re O'Shea*, 11 Cal. App. 568, 105 Pac. 777, the California Court of Appeals for the first district said:

STERILIZATION OF CRIMINALS

"Cruel and unusual punishments are punishments of a barbarous character, and unknown to the common law. The word, when it first found place in the Bill of Rights, meant not a fine or imprisonment, or both, but such punishment as that inflicted by the whipping post, the pillory, burning at the stake, breaking on the wheel, and the like; quartering the culprit, cutting off his nose, ears or limbs, or strangling him to death. It was such severe, cruel and unusual punishments as disgraced the civilization of former ages, and made one shudder with horror to read of them. Cooley on Constitutional Limitations (7th ed.), p. 471, et seq.; *State v. McCauley*, 15 Cal. 429; *Whitten v. State*, 133 Ind. 404, 32 N. E. 1019; *State v. Williams*, 77 Mo. 310. The legislature is ordinarily the judge of the expediency of creating new crimes and prescribing the punishment, whether light or severe. *Commonwealth v. Murphy*, 166 Mass. 66, 42 N. E. 504, 52 Am. St. Rep. 496, 30 L. R. A. 734; *Southern Express Co. v. Com.*, 92 Va. 59, 22, S. E. 809, 41 L. R. A. 436.

"Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the legislature save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted."

On page 163 of Vol. 26 of the *Harvard Law Review*, in an editorial on "The Constitutionality of Compulsory Asexualization of Criminals and Insane Persons," it is stated:

"Police power certainly enables the state to take some measures to protect itself against the birth of undesirable citizens, since limitations to the right to marry have been upheld on this ground. *State v. Gibson*, 36 Ind. 389; *Gould v. Gould*, 78 Conn. 242, 61 Atl. 604. * * * The state can inflict physical injury on individuals for the protection of society. Compulsory vaccination has been upheld, *Jacobsen v. Mass.* 197 U. S. 11, 25 Supt. Ct. 358. There are probably some criminals whose degenerate character can be ascertained, and if a statute can be so drawn as to limit its operation to such as these, it should be constitutional."

On December 9th, 1912, Hon. John J. Light, the attorney general of Connecticut, rendered an opinion concerning the constitutionality of the statute of that state. A part of his opinion follows:

"It has been conclusively proven by the experience of the medical world that the operation of vasectomy and oophorectomy is comparatively painless, and therefore cannot be esteemed cruel, though it may be unusual; but everything new is unusual.

"The constitution does not contemplate that the state should be restricted in the exercise of protective measures to the forms of evil that existed at the time the constitution was adopted.

"In the case of *Weems v. United States*, 217 U. S., page 373, Mr. Justice McKenna, in delivering the opinion of the court, said:

"Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had heretofore

taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is particularly true of constitutions. They are ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as near as human institutions can approach it." The future is their care, and provisions for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The meaning and vitality of the constitution have developed against narrow and restrictive construction.'

"It may be taken as a determination by the General Assembly that a law of this kind is necessary for the preservation of public health and morals, and no one at all familiar with the facts will question the essential justice of such determination. The classes of persons to which the statute applies are capable of endangering the health, morals and good character of our people and adding greatly to the sum of human suffering. There is no discrimination among the members of such classes. The principles laid down in such cogent language by Chief Justice Baldwin, in the case of *Gould v. Gould*, *supra*, are capable of a wider application than the mischief which gave them birth; they may reach as far as the needs of society.

"There are no individual rights under the constitution superior to the common welfare. The whole of society is greater than any of its parts. No man is permitted to claim the right to beget children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility."

On April 12th, 1912, Louis Marshall, an eminent New York lawyer,²⁶ wrote Hon. Warren W. Foster that

"Except so far as prohibited by the constitutional prohibition against the imposition of cruel and unusual punishment, I believe that it is within the power of the state to inflict a death penalty in such cases as at common law were subject to that punishment, and to impose imprisonment up to the limit of incarceration for life, due regard being had to the nature and character of the crime sought to be punished.

"The prohibition against the infliction of cruel and inhuman punishment is difficult of precise definition. It is generally understood to have reference to the imposition of torture, of a punishment which is barbarous and wanton and repugnant to the public conscience. Electrocution has been held not to constitute cruel and unusual punishment within the inhibition of the constitution, in *People ex rel Kemmler v.*

²⁶Eugenics Record Office, Bulletin 10B, p. 73.

STERILIZATION OF CRIMINALS

Durston, 119 N. Y., 596, affd. 136, U. S. 436, 446. The decapitation of the hand of a kleptomaniac, the branding of one who has committed the crime of burglary, or the amputation of the sexual organs of one guilty of adultery would doubtless, in this age, be deemed cruel and inhuman punishment. * * *

"I understand that the operation of vasectomy is painless and has no effect upon the person upon whom it is imposed other than to render it impossible for him to have progeny. If it could be said that such a punishment would only be inflicted in the case of confirmed criminals, there would be strong reason, founded on considerations of the public welfare, which would justify its position. The danger, however, is that it might be inflicted upon one who is not an habitual criminal, who might have been the victim of circumstances and who could be reformed. To deprive such an individual of all hope of progeny would approach closely to the line of cruel and unusual punishment. There are many cases where juvenile offenders have been rendered habitual criminals who subsequently became exemplary citizens. It is true that these cases are infrequent, and yet the very fact that they exist would require the exercise of extreme caution in determining such a punishment as constitutional.

"Although not entirely certain as to this phase of the case, I have no doubt that the imposition of such a penalty by a commission or state board, or by any tribunal other than a court which is to determine the penalty for the offense of which one charged with crime has been convicted, would be unconstitutional. The determination that such an operation shall be performed necessarily involves the infliction of a penalty. Unless justified by a conviction for crime, it would be a wanton and unauthorized act and an unwarranted deprivation of the liberty of the citizen. In order to justify it, the person upon whom the operation is to be performed has, therefore, the right to insist upon his right to due process of law. That right is withheld if the vasectomy is directed, not by the court which imposes the penalty for crime, but by a board or commission, which acts upon its own initiative, or which, under a general provision of law, undertakes to determine whether or not the operation shall be performed on a specific individual.

"In this aspect of the case, it seems to me that the decision of the Court of Appeals in *People ex rel. Barone v. Fox*, 202 N. Y. 616, which adopted the dissenting opinion of Mr. Justice Clarke, in 144 App. Div. 611, is conclusive. In that case it was held that section 79 of chapter 559 of the laws of 1910, authorizing the physical examination by a physician of a woman convicted of disorderly conduct in that she is a common prostitute, in order to discover whether she is afflicted with any communicable venereal disease, and authorizing the magistrates of inferior courts of criminal justice in the city of New York to commit her to a public hospital for treatment for such disease, for a certain period not exceeding one year, or until she shall be cured, is unconstitutional, since the magistrate is bound by the report of the physician so that the convicted person is deprived of her right to have

the fact of the existence of the disease officially determined by the magistrate.

"So in regard to the legislation which you now have under consideration, it is my firm opinion that the court which imposes the sentence upon the prisoner can alone impose the penalty of vasectomy, the prisoner being first accorded an opportunity to be heard by the court on the question as to whether or not such penalty shall be inflicted."

Mr. Charles A. Boston in a "Protest against Sterilization Laws," published in the September, 1913, issue of the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, writes:

"To my mind the forcible sterilization of a human being, because of crime is or may be a violation of the spirit if not of the letter of the principle which prohibited the states to pass any bill of attainder or ex post facto law, and which refused to Congress the power to enact that an attainder of treason should work corruption of blood, or forfeiture beyond the life of the person attainted; it also may have in it the element of unreasonable seizure of a person; it adds to the punishment for an infamous crime, and subjects the individual to a double jeopardy for the same offense, and it may deprive him of liberty without the process of law; it deprives him of the assistance of counsel, and it is or may be a cruel and unusual punishment; it is dangerously allied to involuntary servitude, in that it makes one creature absolutely subservient to the will of another, when the other chooses to exercise the will; it may be the abridgment of a privilege or immunity of a citizen of the United States, and it may be a denial of the equal protection of the laws.

"But I do not base my general argument upon the fact or contention that any such law is beyond peradventure unconstitutional. I recognize that it may escape on the ground that it does not authorize punishment. But I contend that it is nevertheless undesirable, because it weakens the spirit of respect for the clauses of our Bill of Rights, derived from painful experience, whose continued observance is essential to the establishment of justice and the enjoyment of domestic tranquility; for, what a few sincere emotional enthusiasts accomplish today for a fancied public good, may show the way hereafter to a few purely selfish sinister interests, how they also may weaken the constitutional safeguards, to the utter destruction of domestic tranquility or the disestablishment of actual justice."

The Eugenics Record Office concludes its chapter on "Litigation and Legal Opinion," by stating:

"If the purely punitive statute of the state of Washington is declared constitutional, how much more surely ought a carefully designed, purely eugenical statute be formed consistent with the fundamental law of a state—especially if it can be demonstrated that sterilization is an agency capable of cutting off a large portion of our future supply of defective and anti-social individuals, and that it can be supplied

STERILIZATION OF CRIMINALS

with due respect for the rights and personal guarantees of the individuals selected for sterilization, and with such discrimination that worthy blood lives will not be cut off."

APPENDIX.

The committee feels that the Model Law suggested by the Eugenics Record Office is better than any of the statutes which have been passed as yet. The chairman of the committee has received letters from officials in nearly every state in which a sterilization law has been passed, in which faults are found both with the laws and with the methods of administration. For example, Dr. J. T. Bodkin, the warden of the state penitentiary in Lansing, Kansas, writes:

"The new law for sterilization of defectives has not been used in this state. The reason is that the law is too complicated and cumbersome to carry out. It does not devolve upon the surgeon in charge wholly the carrying out of the law, but there have to be so many parties called in before the operation can be performed, and there being no funds to carry it out, the law has become inoperable."

The committee begs the careful consideration of the following Model Sterilization Law submitted by the Eugenics Record Office and of the statement of principles attached thereto:

MODEL STERILIZATION LAW.

(Drafted by the Eugenics Record Office.)

AN ACT to prevent the procreation of feeble-minded, insane, epileptic, inebriate, criminalistic and other degenerate persons by authorizing and providing by due process of law for the sterilization of persons with inferior hereditary potentialities, maintained wholly or in part by public expense.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ———.

Section 1. There is hereby established for the state of ——— a Eugenics Commission, whose duties are hereinafter defined, and which shall be composed of three persons possessing respectively expert knowledge in biology, pathology, and psychology.

Section 2. Immediately after the passage of this act the governor (or State Board of Control) shall appoint the members of the Eugenics Commission, one of whom he (or said State Board of Control) shall designate as chairman. Any determination or order concurred in by two members of the commission shall be deemed an order of the commission. The members of the commission shall hold office at the pleasure of the governor (or State Board of Control), and vacancies in the commission shall be filled by him (or by the said board) as they occur. Immediately after their appointment the commission shall assemble, shall organize their body and shall proceed to carry out the provisions of this act. The members of the Eugenics Com-

JOEL D. HUNTER

mission shall be required to devote their entire time and attention to their duties as herein contemplated, and for their services shall be compensated from state funds not otherwise appropriated; and for the performance of their duties as herein contemplated, the aforesaid commission shall be directly responsible to the governor (or state Board of Control.)

Section 3. It shall be the duty of the Eugenics Commission to examine into the innate traits, the mental and physical conditions, the personal records, and the family traits and histories of all prisoners, inmates, and patients of all the state and county institutions for the insane, the feeble-minded, the epileptic, the inebriate, the criminalistic and pauper classes, and of all individuals of such classes in private institutions supported in whole or in part by state funds, excepting always permanent custodial cases, with the view to determining whether in each particular case the individual is a person potential to producing offspring who, because of the inheritance of inferior or anti-social traits, would probably become a social menace, or a ward of the state. If after such investigation the commission is of the opinion that a given inmate is a person potential to producing such offspring, it shall be the duty of the commission to report its findings and to recommend an appropriate type of sterilizing operation to (state court of record of competent jurisdiction) at least thirty (30) days before the day set for the release of such person from the custody of the state.

Section 4. The aforesaid court shall thereupon set a day for hearing the facts of the case, and shall immediately order that either the persons nominated for the operation, his nearest kin, lawful guardian or close friend, be notified forthwith in writing of the time, place and nature of the aforesaid hearing; provided that in cases wherein on account of the mental or physical conditions of the person so nominated, such notification would, in the opinion of the commission, be inadvisable, and wherein, in the same case, the whereabouts of neither the aforesaid mentioned nearest of kin, lawful guardian, nor close friend within the state be known to the commission, it shall be sufficient for said commission to indorse the notification statement with a statement of the reasons why such notification was not served.

Section 5. On the date previously set for the hearing as herein contemplated, the aforesaid court shall, with all speed consistent with thoroughness, examine the findings and recommendations of the commission, and shall hear any objections that may be offered thereto. The commission shall be represented at the hearing by the (proper state or county attorney), and shall defend their recommendation, and in all subsequent litigation incident to the execution of their duties as herein contemplated, the commission shall have the services of the (said proper state or county attorney). The court may at its discretion appoint counsel to represent the person nominated for sterilization, and shall fix the compensation for such services, which compensation shall be paid from the funds from which other similar court expenses are now paid. If after due consideration the court is satisfied that the individual prisoner, inmate, or patient nominated for sterilization is a person as found by the commission, namely, one who is poten-

STERILIZATION OF CRIMINALS

tial to reproducing offspring who would probably, because of the inheritance of inferior or anti-social traits, become a social menace, or a ward of the state, it shall be lawful and it shall be the duty of the aforesaid court to authorize and to order the Eugenics Commission to order the responsible head of the institution, in whose charge the particular person nominated for sterilization may be, to cause to be performed on such person, in a safe and humane manner, before his or her discharge or release from the custody of the state, an operation for the prevention of begetting or of conception, as the case may be; and the type of operation may be made a part of the order of the commission in each case; provided that said operation shall not be had within five days after the giving of the order therefor; and the aforementioned responsible head of the institution in whose custody the person subject to a particular order for sterilization may be, shall be directly responsible to the Eugenics Commission for the execution of the operation as ordered.

Section 6. In case of a decision by the court contrary to the recommendations of the Eugenics Commission, said commission may at its discretion order an appeal to (state court of competent jurisdiction), and the execution of any such original order for sterilization as herein provided for may be suspended by any judge of (court of competent jurisdiction) in the county in which the particular prisoner, inmate or patient may be confined, until the hearing and determination of objections to the said order, which hearing shall be had not later than the next special term for motions of the court, and an appeal will lie from the determination of such objections as from an order in a special proceeding. Pending the final determination of such a suspended order or of an appeal by the commission, the subject of the particular order for sterilization shall remain in the custody of the state.

Section 7. After ordering the operation as hereinbefore provided for, any such operation may be performed by any skilled surgeon licensed in the state, who may be designated by the responsible custodian of the person ordered sterilized, and any expenses incurred by the operation shall be borne by the institution in whose custody the person sterilized may be. The aforesaid order shall constitute complete authority for the performance of said operation, and no skilled surgeon, duly licensed in the state, performing the same, shall be questioned in any place or held responsible for the performance of the same.

Section 8. It shall be the duty of the managing head of all the state and private institutions subject to the provisions of this act to co-operate with the Eugenics Commission in the execution of their duties as herein contemplated, and to secure appropriate data concerning innate traits, personal records, and family histories and traits of the prisoners, inmates or patients of their respective institutions subject to the provisions of this act, and to furnish said data to the Eugenics Commission at least 60 days before the date set for the release of each particular inmate.

Section 9. The Eugenics Commission shall have full authority to make further study of the personal and family histories of persons

subject to the provisions of this law furnished as herein contemplated by the managing heads of institutions; and in the prosecution of such investigations the commission shall have the right to summon persons and to administer oaths, and shall have free access to all court and institution records of this state likely to be of service to such investigations.

Section 10. It shall be the duty of the Eugenics Commission to keep a permanent record of all business transacted by them, including a record of all cases, and histories examined into, and of all reports and recommendations made by them, and of all orders made and received by them, and annually to report a history of all such transactions to the governor (or state Board of Control).

Section 11. All records of investigations, examinations, reports, recommendations, orders, and personal and family histories made, entered, or secured by the commission are hereby declared to be the property of the state, and shall not be opened to public inspection except upon an order made by a judge of a court of record; provided, however, that all such records may be used for scientific study by the commission.

PRINCIPLES PROPOSED FOR MODEL STERILIZATION LAW.

(1.) That both in intent and phrasing the proposed sterilization law should follow the strictest eugenical motives, and should be based upon the theory that sterilization is of such consequences that it should be ordered only by due process of law and only after expert investigation.

(2.) That the inmates of all institutions for the insane, the feeble-minded, the epileptic, the inebriate, and the pauper classes, and of all reformatory and penal institutions be made liable to examination into their personal and family histories with the view to determining whether such individuals are potential to producing offspring who would probably, because of inherited defects or anti-social traits, become social menaces or wards of the state.

(3.) That such determination be made by a eugenics commission composed of persons possessing expert knowledge of biology, pathology and psychology.

(4.) That the responsible head of the institution, in whose custody the particular inmate subject to the provisions of this act may be, be required to furnish the eugenics commission with data on said inmates' mental and physical condition, innate traits, personal record, family traits and history.

(5.) That such examination be made of all members of the aforesaid classes prior to release from their respective custodians.

(6.) That in case it is found for any given individual of the classes herein enumerated that he or she is the potential parent of defectives, the commission shall report its findings and recommendations to a state court of competent jurisdiction, and shall recommend an appropriate type of sterilizing operation.

(7.) That the court shall examine the evidence, allowing ample

STERILIZATION OF CRIMINALS

opportunity for the individual in question or his relatives, guardian or friends to be heard; whereupon, if the aforesaid court is satisfied that the individual in question is a person potential to producing offspring who would probably, because of inherited defective or anti-social traits become a social menace or a ward of the state, such court shall order the responsible head of the institution under whose custody the individual in question may be, to cause to be performed upon such person in a safe and humane manner a surgical operation of effective sterilization before his or her release or discharge.

Mr. Joel D. Hunter, Chicago.

Dear Mr. Hunter:

To your report on the Sterilization of Criminals, inasmuch as it presents the state of the question to be considered, I subscribe. It sets forth the different aspects of the subject adequately. In so far as the report can be construed as proposing legislation looking to the sterilization of the unfit, I must dissent from it. I take this position because I am convinced that the basic warrant for such legislation is altogether lacking. It has not been proven that criminal tendencies are inheritable. As for the feeble-minded, segregation appears to me to be the only practical plan for the protection of society.

Very sincerely yours,

JOHN WEBSTER MELODY,

Professor Moral Theology, Catholic University, Washington, D. C.