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Eugenics Record Office

BULLETIN No. 10 B


II. THE LEGAL, LEGISLATIVE AND ADMINISTRATIVE ASPECTS OF STERILIZATION

BY

HARRY H. LAUGHLIN

Secretary of the Committee

Cold Spring Harbor
Long Island, New York
February, 1914

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Report of the Committee to Study and to Report on
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American Population.

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Committee to Study and to Report on the Best Practical Means of Cutting Off the Defective Germ-Plasm in the American Population.

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PREFACE.

In this study the committee sets forth the results of its investigation into the legislative and legal aspects of sterilization. The study includes calculations supported by data on the working out of the program proposed by the committee as efficacious in substantially reducing the supply of defectives in the American population. The program proposed is a segregation program supported by sterilization whenever a potential parent of anti-social offspring is returned to the general population.

The various aspects of the problems connected with the committing of socially inadequate individuals into the custodial care of the state, and an examination of the existing legal authority and processes for such commitments, will have to be deferred to subsequent studies. The study of the effects of sterilization on the individual and of the surgical, economic, and moral factors will likewise be the subjects of reports already under way. There will be also a digest of literature describing first-hand studies on the heredity of human defects, pointing out the manner in which the families of individuals proposed for sterilization should be studied, and the hereditary qualities of the particular individual determined. We are assuming for this particular study that heredity as an important factor in the production of defectives and in the causation of anti-social conduct is a fact and is accepted generally by the American people. This particular study, then, is not controversial in reference to such factors.

Especial attention is directed toward the criticisms of existing laws on page 98, toward the model law on page 115, and toward the calculations on the working out of the proposed program on page 132.

In the preparation of this report the committee is greatly indebted to Dr. Charles B. Davenport, resident director of the Eugenics Record Office, for frequent consultation and valuable cooperation. Indebtedness to the Honorable Warren W. Foster, Judge of the Court of General Sessions of New York City, is gratefully acknowledged for legal advice in working out the model statute. The chairman, Mr. Bleecker Van Wagenen, has, as with all of the
studies of the committee thus far made, given much of his personal
time and thought to the working out of this particular report—
without his direction this report would not have been possible.

HARRY H. LAUGHLIN,

Cold Spring Harbor, L. I.

December 15, 1913.
CHAPTER I.

INTRODUCTION.

In the light of the studies thus far 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 them as are returned to society at large while still potential parents. Moreover, such a program to be generally effective must be nation-wide and consistently followed in its application. The relation between segregation and sterilization is, under the model law, automatically complementary. If segregation ceases and the individual of potential parenthood of defectives is about to be returned to society, he is first to be sterilized. If, in such case, objection is made to sterilization, let the particular individual remain under the custody of the state; but protect the nation's breeding stock at all hazards, for self-preservation is the first law of nature with organized society as with individuals. If this principle is accepted, in order to consummate the desired ends, it remains mainly to bring about gradual increase of the capacity of institutions for the custodial care of the socially inadequate, and for finer discrimination in the legal, medical, and social processes for selecting and classifying such inadequates for custodial care, training, treatment, and reformation—for such ends as well as the immediate protection of society are sought by modern institutions; and for the education of a corps of experts skilled in studying family histories and in determining the hereditary potentialities of individuals. And as the science of human heredity advances, enabling experts to judge with greater surety of eugenical value of larger classes of defectives, the several states must extend their sterilizing operations in keeping with the growth of their institutions for the anti-social classes and with scientific knowledge.

The whole task of eugenics does not lie with segregation and sterilization; in fact these two agencies represent, at best, only the negative side of improving the human stock. As with the improvement of any other species, the human species must be improved by encouraging fit and fertile matings among the better classes and in cutting off the lower levels. For the latter it is sufficient to prove
that an individual carries hereditary traits, the continuation of which would be a menace to society. For the former—the constructive side—the problem is much more difficult, for here the greatest skill in selection is required, even if the task were done then; but all of the conventions and customs and morals of modern life and of civilization itself must be considered. Thus the constructive side of eugenical studies becomes largely a matter of research into the manner of the inheritance of sterling traits, of the study of the individual’s hereditary qualities and of the education of the educable to regard hereditary traits and eugenically fortunate combinations as marriage assets of the first order.

The studies of this committee show clearly that in states having no laws authorizing and regulating such operations many more sterilizing operations of the various types for purely eugenical or for mixed eugenical and medical motives have been performed within institutions than have been performed under legal guidance in all the states. Thus, in some of the institutions of Pennsylvania, Kansas, Idaho, Virginia, Massachusetts, New Jersey, New York, Iowa, and Oregon, which have or had at the time no sterilization laws, there have been thus sterilized a considerable number of individuals. Usually the consent of the parents or guardian has been secured. And in no case with which the committee is familiar has a legal or a professional complication resulted.

The following pedigree gives an example of eugenical sterilization in a state not regulating such matters.
In this case the man sterilized was a low-grade individual, subject to attacks of manic depressive insanity. During such a period, while being treated at the Boston State Hospital, the authorities investigated his family history and found that his wife was an individual of low mentality, who, however, kept her home very neat; but the children of the couple were, without exception, of a very low mental order and were destined to become wards of the state. The patient recovered from his attack of insanity, but the authorities declined to release him, because he was still procreating defective offspring. Vasectomy was proposed; the patient demurred; the wife was called in, and among the hospital authorities, the wife, and the patient, vasectomy was agreed upon. The operation was performed and the patient was allowed to go home. His family was no longer entirely dependent upon charity, nor was the patient any longer an expense to the state. Our evidence shows that many operations have been performed in many states under quite similar although less dramatic circumstances. For example, Dr. F. C. Cave, Superintendent of the State Home for Feeble-Minded at Winfield, reports:

“During the administration of Dr. F. Hoyt, of Kansas School for Feeble-Minded at Winfield, asexulation was performed upon fifty-eight inmates, fourteen girls and forty-four boys.”

Such cases raise the question, whether sterilization laws are necessary. Cannot the same end be accomplished without them? In their absence great eugenical good could and would, doubtless, as in the past, often be accomplished by enlightened physicians and superintendents of state institutions, but the committee is firmly convinced that an agency so fraught with possibilities for good and for evil should be regulated by law, especially so since, in order to achieve the eugenical end desired, namely, the cutting off of the descent lines of the large body of degenerates now existing, it would be necessary to sterilize in large numbers. Second, should it be agreed that eugenical sterilization should be regulated by law it still remains to determine whether such operations should be considered simple police measures to be entrusted to a non-judicial eugenics commission with wide powers, or whether such operations should be considered so fundamental and so liable to encroach upon the liberty and personal rights of the individuals proposed for sterilization that they should be ordered only by due process of law. The committee feels
quite strongly that compulsory eugenic sterilization should be authorized only as a result of due process of law. The soundness of this view we attempt to demonstrate in the subsequent chapters of this study.

In consonance with this position, if a sterilization program is to become effective, a model law must be worked out. Such a law must function as intended; it must not become a dead letter when once upon the statute books of a state. It should provide that under no circumstances shall a socially inadequate individual in state custody, who is a potential parent of defectives of certain anti-social types, be released from such custody until such individual is first rendered sexually sterile. The law should be mandatory in reference to the activities of its executive in investigating the hereditary qualities of persons under the custody of the state. It must amply safeguard the rights of the individual. The state must assume the burden of proof of potential parenthood of defective offspring. As a matter of course the statute should be thoroughly consonant with our ideals of justice, and with our heritage of individual rights, and it must stand the test of public opinion; it must also stand the test of constitutionality by our highest courts. It must be supported by ample appropriation, enabling the state to employ competent and earnest men on its executive commission.

Three motives appear to have prompted the sterilization of individuals in America, first, the eugenic, second the punitive, and third the therapeutic. This model statute should be based upon purely eugenic ideals and must not under any consideration nor in any measure be punitive or vindictive. There is nothing to be gained by sterilizing individuals in a vindictive manner for wrongs done to society. Certainly such treatment would be contrary to our modern sense of justice, and to our modern methods of handling individuals who are unfortunate enough to have to be consigned to the wardship or custody of the state. If an individual possesses hereditary traits of danger to the race he should not be allowed to procreate his kind, but in cutting off his line of descent the eugenic motive must be kept constantly in view. Punishment for the immediate protection of society, and reformatory and hospital care for the benefit of the individual are other problems, which, although part of the general plan for social betterment, must not be confused with this particular eugenic problem. It seems wholly unnecessary
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<th>Act</th>
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<td>March 24, 1956</td>
<td>Chapter 211</td>
<td>Senate</td>
<td>June 14, 1956</td>
<td>To amend the Federal Council of Churches Act</td>
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<td>Act 3</td>
<td>April 1, 1957</td>
<td>Chapter 312</td>
<td>House</td>
<td>July 3, 1957</td>
<td>To establish the Federal Council of Churches</td>
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<td>Act 4</td>
<td>May 4, 1958</td>
<td>Chapter 413</td>
<td>Senate</td>
<td>August 17, 1958</td>
<td>To amend the Federal Council of Churches Act</td>
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Note: Additional acts and information are listed in the table, but are not fully transcribed here due to the nature of the image.
in this statute to authorize sterilization from a therapeutic motive, inasmuch as the laws governing surgical operations in general appear to be quite adequate in such cases. If a person becomes diseased or injured, and an operation that involves sterilization is necessary, then the fact that such operation does involve sterilization does not apparently change the legal status of the case; if accidentally a line of degenerates is cut off, well and good, and if in a eugenical sterilization a therapeutic end is served, so much the better; but the principal motive and authority for a particular operation should be clear and distinct and should not be dependent upon a legal tangle. In both institutional and private practice therapeutic operations should be regulated as at present.

The legal factor of the proposed program for cutting off the supply of defectives by sterilization as supplementary to segregation presents many difficult problems. These problems are, however, due to the newness of the agency proposed to be invoked by society for effecting the extirpation of its degenerate strains and for promoting the conservation of its better elements, rather than by any inherent legal impossibilities of achievement. This the committee endeavors to demonstrate in the subsequent chapters of this study.

CHAPTER II.

EXISTING LAWS: ANALYSIS, TEXT, AND LEGISLATIVE HISTORY.

The committee reports herewith a history of the sterilization laws thus far enacted by the several states, and records also the facts concerning the working out of these laws, seeking thereby to point out their elements of virtue and deficiency. By the aid of conservative and learned counsel the committee presents for the consideration of the public a model sterilization law (p. 117), which, if generally adopted by the states, will, the committee believes, set in operation agencies which will, if consistently supported, greatly, and in a humane and just manner, reduce the supply of human beings suffering from insurmountable hereditary handicaps.

A. TABULAR ANALYSIS OF LAWS.

The accompanying table gives an analysis of all of the existing (December, 1913) sterilization laws.
B. TEXTS AND HISTORIES OF THE STATUTES.

The full text of these laws, together with their legislative history follows:

1. **Sterilization Law of Indiana.**

   The bill was introduced on January 29, 1907, by Representative Horace D. Read, of Tipton, Ind.
   It passed the House February 19, 1907—59 ayes, 22 noes; the Senate March 6, 1907—28 ayes, 16 noes.
   It was approved March 9, 1907, by Governor J. Frank Hanley.
   It appears on the Indiana laws of 1907 as Chapter 215, on page 377; Burns’ Indiana Statutes 1908, sec. 2232.

   **AN ACT to prevent procreation of confirmed criminals, idiots, imbeciles, rapists; Providing that superintendents or boards of managers of institutions where such persons are confined shall have the authority and empowered to appoint a committee of experts, consisting of two physicians, to examine into the mental condition of such inmates.**

   **WHEREAS,** heredity plays a most important part in the transmission of crime, idiocy, and imbecility:
   **THEREFORE,** BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA, that on and after the passage of this act it shall be compulsory for each and every institution in the state, entrusted with the care of confirmed criminals, idiots, rapists, and imbeciles, to appoint upon its staff, in addition to the regular institutional physician, two (2) skilled surgeons of recognized ability, whose duty it shall be, in conjunction with the chief physician of the institution, to examine the mental and physical condition of such inmates as are recommended by the institutional physician and board of managers. If in the judgment of this committee of experts and the board of managers, procreation is inadvisable, and there is no probability of improvement of the mental and physical condition of the inmate, it shall be lawful for the surgeons to perform such operation for the prevention of procreation as shall be decided safest and most effective. But this operation shall not be performed except in cases that have been pronounced unimprovable: **Provided,** That in no case shall the consultation fee be more than three dollars to each expert, to be paid out of the funds appropriated for the maintenance of such institution.

2. **Sterilization Law of Washington.**

   The bill was introduced as a part of the criminal code which was prepared by the Code Commission.
   It passed the Senate March 1, 1909; the House March 4, 1909.
   It was approved March 22, 1909, by Governor M. E. Hay.
   It appears on the Washington statutes of 1909 as Chapter 249, sec. 35 Criminal Code.
PREVENTION OF PROCREATION: 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, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person for the prevention of procreation.

3a. **First Sterilization Laws of California.**

The bill was introduced on February 8, 1909, by Senator W. F. Price, of Santa Rosa, California.

It passed the Senate March 16, 1909—21 ayes, 1 no; the House March 22, 1909—41 ayes, 0 noes.

It was approved April 26, 1909, by Governor James N. Gillett.

It appears on the California statutes of 1909 as Chapter 720 on page 1093.

(Its repealed and substituted for by Chapter 363, sec. 4, June 13, 1913).

AN ACT to permit asexualization of inmates of the state hospitals and the California Home for the Care and Training of Feeble-Minded Children and of convicts in the state prisons.

The people of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Whenever in the opinion of the medical superintendent of any state hospital, or the superintendent of the California Home for the Care and Training of Feeble-Minded Children, or of the resident physician in any State prison, it would be beneficial and conducive to the benefit of the physical mental, or moral condition of any inmate of said state hospital, home, or state prison, to be asexualized, then such superintendent or resident or resident physician shall call in consultation the general superintendent of the state hospital and the secretary of the state board of health, and they shall jointly examine into all the particulars of the case with the said superintendent or resident physician, and if in their opinion, or in the opinion of any two of them, asexualization will be beneficial to such inmate, patient, or convict, they may perform the same; Provided, that in the case of an inmate or convict confined in any of the state prisons of this state, such operation shall not be performed unless the said inmate or convict has been committed to a state prison in this or in some other state or country at least two times for some sexual offense, or at least three times for any other crime, and shall have given evidence while an inmate in a state prison in this state that he is a moral and sexual pervert; and provided further, that in the case of convicts sentenced to state prison for life who exhibit continued evidence of moral and sexual depravity, the right to asexualize them, as provided in this act, shall apply, whether they have been inmates of a state prison either in this or any other state or country more than one time.

This statute repeals the first sterilization law, Chapter 720 on page 1093, April 26, 1909.

The bill was introduced on January 28, 1913, by Senator Edwin M. Butler, of Los Angeles, Cal.

It passed the Senate April 22, 1913—21 ayes, 4 noes; the House May 10, 1913—40 ayes, 24 noes.

It was approved June 13, 1913, by Governor Hiram W. Johnson.

It appears on the California statutes as Chapter 363; Senate bill 881.

AN ACT to provide for the asexualization of the inmates of state hospitals for the insane, the Sonoma State Home, of convicts in the state prisons, and of idiots, and repealing an act entitled “An act to permit asexualization of inmates of the state hospitals and the California Home for the Care and Training of Feeble-Minded Children and of convicts in the state prisons,” approved, April 26, 1909.

The people of the State of California do enact as follows:

SEC. 1. Before any person who has been lawfully committed to any state hospital for the insane, or who has been an inmate of the Sonoma State Home, and who is afflicted with hereditary insanity or incurable chronic mania or dementia shall be released or discharged therefrom, the state commission in lunacy may in its discretion, after a careful investigation of all the circumstances of the case, cause such a person to be asexualized, and such asexualization, whether with or without the consent of the patient, shall be lawful and shall not render said commission, its members or any person participating in the operation liable either civilly or criminally.

Provided, that such operation shall not be performed unless the said recidivist has been committed to a state prison in this or some other state or country at least two times for rape, assault with intent to commit rape, or seduction, or at least three times for any other crime or crimes, and shall have given evidence while an inmate of a state prison in this state that he is a moral or sexual degenerate or pervert; and provided, further, that in the case of convicts sentenced to state prison for life, who exhibit continued evidence of moral and sexual depravity, the right to asexualize them, as provided in this section, shall apply whether they shall have been inmates of a state prison in this or any other country or state more than one time or not; pro-
vided, further, that nothing in this act shall apply to or refer to any voluntary patient confined or kept in any state hospital of this state.

Sec. 3. Any idiot, if a minor, may be assexualized by or under the direction of the medical superintendent of any state hospital, with the written consent of his or her parent or guardian, and if an adult, then with the written consent of his or her lawfully appointed guardian, and upon the written request of the parent or guardian or any such idiot or fool, the superintendent of any state hospital shall perform such operation or cause the same to be performed without charge therefor.

Sec. 4. An act entitled “An act to permit assexualization of inmates of the state hospitals and the California Home for the Care and Training of Feeble-Minded Children, and of convicts in the state prison,” approved April 26, 1909, is hereby repealed.


The bill was introduced on February 2, 1909, by Representative Wilbur F. Tomlinson, of Danbury, Conn.

It passed the House July 20, 1909—130 ayes, 28 noes; the Senate July 28, 1909.

It was approved August 15, 1909, by Governor F. B. Weeks.

It appears on the Connecticut statutes as Public Acts 1909, Chapter 209. (Substitute for House bill No. 123).

AN ACT concerning operations for the prevention of procreation.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. The directors of the state prison and the superintendents of the state hospitals for the insane at Middletown and Norwich are hereby authorized and directed to appoint for each of said institutions, respectively, two skilled surgeons, who, in conjunction with the physician or surgeon in charge at each of said institutions, shall constitute a board, the duty of which shall be to examine such inmates of said institutions as are reported to them by the warden, superintendent, or the physician or surgeon in charge, to be persons by whom procreation would be inadvisable. Such board shall examine the physical and mental condition of such persons and their record and family history, so far as the same can be ascertained, and if, in the judgment of a majority of said board, procreation by any such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy, or imbecility, and there is no probability that the condition of any such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then said board shall appoint one of its members to perform the operation of vasectomy or oophorectomy, as the case may be, upon such person. Such operation shall be performed in a safe and humane manner, and the board making such examination and the surgeon performing such operation shall receive from the state such compensation for services rendered as the warden of the state prison or the superintendent of either of such hospitals shall deem reasonable.

Sec. 2. Except as authorized by this act, every person who shall perform, encourage, assist in, or otherwise promote the performance of either of
the operations described in section one of this act, for the purpose of destroying the power to procreate the human species, or any person who shall knowingly permit either of such operations to be performed upon such person, unless the same shall be a medical necessity, shall be fined not more than one thousand dollars, or imprisoned in the state prison not more than five years or both.


The bill was introduced March 3, 1911, by the Code Commission not as a separate bill, but as part of the Crimes and Punishments bill. It passed the Senate March 10, 1911—17 ayes, 1 no, 1 absent; the House March 14, 1911—34 ayes, 7 noes, 4 absent, 4 not voting. It was approved March 17, 1911, by Governor Tasker L. Oddie. It appears on the Nevada statutes as Section 28 of the Crimes and Punishment Act.

Prevention of Procreation: 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, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person for the prevention of procreation; provided, the operation so performed shall not consist of castration.

6 a. First Sterilization Law of Iowa.

The bill was introduced on February 17, 1911, by Representative Eli C. Perkins, of Delhi, Iowa. It passed the House March 28, 1911—64 ayes, 13 noes; the Senate April 6, 1911—32 ayes, 0 noes. It was approved April 10, 1911, by Governor B. F. Carroll. It appears on the Acts of the Thirty-fourth General Assembly of Iowa (1911) as Chapter 129. (It was repealed and substituted for by Chapter 187, Acts of the Thirty-fifth General Assembly April 19, 1913).

AN ACT to prevent the procreation of habitual criminals, idiots, feeble-minded, and imbeciles. [Additional to title twelve (XII) of the code, relating to the police of the state.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Unsexing of Criminals, Idiots, etc. That it shall be the duty of the managing officer of each public institution in the state, entrusted with the custody or care of criminals, idiots, feeble-minded, imbeciles, drunkards, drug fiends, epileptics, and syphilitics, and they are hereby authorized and
LEGAL, LEGISLATIVE AND ADMINISTRATIVE ASPECTS OF STERILIZATION.

directed to annually, or oftener, examine into the mental or physical condition of the inmates of such institutions, with a view to determine whether it is improper or inadvisable to allow any of such inmates to procreate; and to annually, or oftener, call into consultation the members of the state board of parole. The members of such board and the managing officer and the surgical superintendent of such institution shall judge of such matters. If a majority of them decide that procreation by any such inmate would produce children with a tendency to disease, crime, insanity, feeble-mindedness, idiocy, or imbecility, and there is no probability that the condition of any such inmate so examined will improve to such an extent as to render procreation by any such inmate advisable, or if the physical or mental condition of any such inmate will be materially improved thereby, or if such inmate is an epileptic or syphilitic, or gives continued evidence while an inmate of such institution that he or she is a moral or sexual pervert, then the surgeon of the institution shall perform the operation of vasectomy or ligation of the fallopian tubes, as the case may be, upon such person. Provided, that such operation shall be performed upon any convict or inmate of such institution who has been convicted of prostitution or violation of the law, as laid down in chapter two hundred and sixteen (216)*, acts of the thirty-third general assembly, or who has been twice convicted of some other sexual offense, or has been three times convicted of felony, and each such convict or inmate shall be subjected to this same operation of vasectomy or ligation of the fallopian tubes, as the case may be, by the surgeon of the institution.

SEC. 2. Penalty. Except as authorized in this act, every person who shall perform, encourage, assist in or otherwise promote the performance of either of the operations described in section 1 of this act, for the purpose of destroying the power to procreate the human species, or any person who shall knowingly permit either of such operations to be performed upon such persons, unless the same shall be a medical necessity, shall be fined not more than one thousand ($1000.00) dollars, or imprisoned in the county jail not to exceed one year, or both.

*The full text of Chapter 216 is as follows:

CHAPTER 216 — LAWS OF THE THIRTY-THIRD IOWA GENERAL ASSEMBLY.

Detention or Confining of Females by Force or Intimidation for Purposes of Prostitution.

S. F. 216.

AN ACT Prohibiting the detention or confinement of any female in any house, room, building or premises by force false pretence or intimidation for purposes of prostitution or with intent to cause such female to become a prostitute, and providing a punishment for the violation thereof. (Additional to chapter nine (9) of title twenty-four (XXIV) of the code relating to offenses against chastity, morality and decency).

Be it enacted by the General Assembly of the state of Iowa:

SECTION 1. Detention or confinement of females for prostitution purposes. Whoever shall unlawfully detain or confine any female by force false pretence, or intimidation in any room, house, building or premises in this state, against the will of such female, for purposes of prostitution or with intent to cause such female to become a prostitute and be guilty of fornication or concubinage therein, or shall by force, false pretence, confinement or intimidation attempt to prevent any female so as aforesaid detained from leaving such room, house, building, or premises, and whoever aids assists or abets by force, false pretence, confinement, or intimidation, in keeping, confining, or unlawfully detaining any female in any room, house, building, or premises in this state against the will of such female for the purpose of prostitution, fornication, or concubinage, shall, on conviction, be imprisoned in the penitentiary not less than one nor more than ten years.

Approved March 25, A. D. 1909.
6b. Second Sterilization Law of Iowa.

This statute repeals the first sterilization law, Chapter 129, Acts of the Thirty-fourth General Assembly, April 10, 1911.

The bill was introduced March 10, 1913, by Representative Col. Halgrims, of Humboldt, Iowa.

It passed the House April 17, 1913—61 ayes, 7 noes: the Senate April 18, 1913—27 ayes, 11 noes.

It was approved April 19, 1913, by Governor George W. Clarke.


PREVENTION OF THE PROCREATION OF HABITUAL CRIMINALS, IDIOTS, FEEBLE-MINDED, INSANE AND DISEASED AND DEGENERATE PERSONS.

H. F. 641.

AN ACT to repeal the law as it appears in chapter one hundred twenty-nine (129) of the acts of the thirty-fourth general assembly, and to enact a substitute therefor relating to the prevention of the procreation of criminals, rapists, idiots, feeble-minded, imbeciles, lunatics, drunkards, drug fiends, epileptics, syphilitics, moral and sexual perverts, and diseased and degenerate persons.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Unsexing of criminals, idiots, etc. Board of Parole. Duties.

That it shall be the duty of the state board of parole, with the managing officer and the physician of each public institution in the state, entrusted with the care and custody of criminals, rapists, idiots, feeble-minded, imbeciles, lunatics, drunkards, drug fiends, epileptics, syphilis, moral and sexual perverts, and diseased and degenerate persons, and they are hereby authorized and directed to, annually or oftener, examine into the mental and physical condition, the records and family history of the inmates of such institutions, with a view of determining whether it is improper or inadvisable to allow any of such inmates to procreate and to judge of such matters. If a majority of them decide that procreation by any such inmates would produce children with a tendency to disease, deformity, crime, insanity, feeble-mindedness, idiocy, imbecility, epilepsy, or alcoholism, or if the physical or mental condition of any such inmate will probably be materially improved thereby, or if such inmate is an epileptic or syphilitic, or gives evidence, while an inmate of such institution, that he or she is a moral or sexual pervert, then the physician of the institution, or one selected by him, shall perform the operation of vasectomy or ligation of the Fallopian tubes, as the case may be, upon such person.
provided that such operation shall be performed upon every convict or inmate of such institution who has been convicted of prostitution or violation of the law as laid down in chapter two hundred sixteen (216)* of the acts of the thirty-third general assembly, or who has been twice convicted of other sexual offenses, including soliciting, as defined in section four thousand nine hundred seventy-five-c (4975-c)** of the supplement to the code, 1907, or who has been twice convicted of a felony, and each such convict or inmate shall be subject to this same operation of vasectomy or ligation of the Fallopian tubes, as the case may be, by the physician of the institution, or one selected by him.

**Sec. 2. Certain persons—operations upon application.** Those afflicted with syphilis or epilepsy may apply to the board of parole, or any judge of the district court, and upon order of such board or judge, the operation of vasectomy or ligation of the Fallopian tubes may be performed upon such person, and any law restricting marriage of such persons shall be void and of none effect, in case one of the contracting parties has submitted to such operation and the same was known to both parties before their marriage.

**Sec. 3. Annual report.** The board of parole shall make an annual report to the governor of the state, fully covering their proceedings under the authority of this act, and also observations and statistics regarding its benefits.

**Sec. 4. Unsexing prohibited except as authorized—penalty.** Except as authorized in this act, every person who shall perform, encourage, assist in or otherwise promote the performance of either of the operations described in section one (1) of this act, for the purpose of destroying the power to procreate the human species, or any person who shall knowingly permit either of such operations to be performed upon such persons, unless the same shall be a medical necessity, shall be fined not more than one thousand dollars ($1000.00), or imprisoned in the penitentiary not to exceed one year, or both.

7. **Sterilization Law of New Jersey.**

The bill was introduced on February 27, 1911, by Representative B. H. White, of Mount Holly, New Jersey.

It passed the House March 28, 1911—33 ayes, 6 noes; the Senate April 18, 1911—12 ayes, 0 noes.

It was approved April 21, 1911, by Governor Woodrow Wilson.

It appears on the New Jersey statutes of 1911 as Chapter 190.

AN ACT to authorize and provide for the sterilization of feeble-minded (including idiots, imbeciles and morons), epileptics, rapists, certain criminals and other defectives.

WHEREAS, heredity plays a most important part in the transmission of feeble-mindedness, epilepsy, criminal tendencies, and other defects:

*See footnote page 19.

**Sec. 4975-c. Soliciting for the purpose of prostitution—penalty.** That any person who shall ask, request, or solicit another to have carnal knowledge with any female for a consideration or otherwise shall be punished by imprisonment in the penitentiary, not exceeding five years or imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both such fine and jail imprisonment. (31 G. A., ch. 165.)
Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Immediately after the passage of this act, the Governor shall appoint by and with the advice of the Senate, a surgeon and neurologist, each of recognized ability, one for a term of three (3) years and one for a term of five years (5); their successors each to be appointed for the full term of five years, who in conjunction with the Commissioner of Charities and Corrections shall be known as and is hereby created the “Board of Examiners of Feebleminded (including idiots, imbeciles and morons), Epileptics and other Defectives,” whose duty it shall be to examine into the mental and physical condition of the feeble-minded, epileptic, certain criminal and other defective inmates confined in the several reformatories, charitable, and penal institutions in the counties and state. Any vacancy occurring in said Board of Examiners shall be filled by appointment of the Governor for the unexpired term.

2. The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape, or of such succession of offenses against the criminal law as in the opinion of this board of examiners shall be deemed to be sufficient evidence of confirmed criminal tendencies.

3. Upon application of the superintendent or other administrative officer of any institution in which such inmates are or may be confined or upon its own motion, the said board of examiners may call a meeting to take evidence and examine into the mental and physical condition of such inmates confine as aforesaid, and if said board of examiners, in conjunction with the chief physician of the institution, unanimously find that procreation is inadvisable and that there is no probability that the condition of such inmate so examined will improve to such an extent as to render procreation by such inmate advisable, it shall be lawful to perform such operation for the prevention of procreation as shall be decided by said board of examiners to be most effective, and thereupon it shall and may be lawful for any surgeon qualified under the laws of this state, under the direction of the chief physician of said institution, to perform such operation; previous to said hearing the said board shall apply to any judge of the Court of Common Pleas, of the county in which said person is confined, for the assignment of counsel to represent the person to be examined, said counsel to act at said hearing and in any subsequent proceedings, and no order made by said board of examiners shall become effective until five days after it shall have been filed with the clerk of the Court of Common Pleas, of the county in which said examination is held, and copy shall have been served upon the counsel appointed to represent the person examined, proof of service of the said copy of the order to be filed with the clerk of the Court of Common Pleas. All orders made under the provision of this act shall be subject to review by the Supreme Court or any justice thereof, and said court may upon appeal from any order grant a stay which shall be effective until such appeal shall have been decided. The judge of the Court of Common Pleas appointing any counsel under this act may fix the compensation to be paid him, and it shall be paid as other court expenses are now paid.

No surgeon performing an operation under the provisions of this law shall be held to account therefor, but the order of the board of examiners shall be a full warrant and authority therefor.

4. The record taken upon the examination of every such inmate, signed by the said board of examiners, shall be preserved in the institution where such inmate is confined, and a copy thereof filed with the Commissioner of Charities and Corrections, and one year after the performing of the operation the superintendent or other administrative officer of the institution wherein such inmate is confined shall report to the board of examiners the condition
of the inmate and the effect of such operation upon such inmate. A copy of the report shall be filed with the record of the examination.

5. There shall be paid, out of the funds appropriated for maintenance of such institutions, to each physician of said board of examiners, a compensation of not more than ten ($10) dollars per diem for each day actually given to such work or examination, and his actual and necessary expenses in going to, holding and returning from such examination.

When in the judgment of the board of examiners it is necessary to secure the assistance of a surgeon outside the medical staff of the institution to perform or assist in said operation, the necessary expenses of such surgeon shall be paid from the maintenance account of such institution.

6. If any provisions of this act shall be questioned in any court, and the provisions of this act with reference to any class of persons enumerated therein shall be held to be unconstitutional and void, such determination shall not be deemed to invalidate the entire act, but only such provisions thereof with reference to the class in question as are specifically under review and particularly passed upon by the decision of the court.

7. This act shall take effect immediately.


The bill was introduced on March 5, 1912, by Assemblyman Robert P. Bush, of Horseheads, N. Y.

It passed the House March 25, 1912—78 ayes, 9 noes; the Senate March 29, 1912—48 ayes, 0 noes.

It was approved April 16, 1912, by Governor John A. Dix.

It appears on the New York statutes as Public Health Law (L. 1909, Chapter 49), Art. 19 (Section 350-353), as added by L. 1912, Chapter 445.

AN ACT to amend the public health law, in relation to operations for the prevention of procreation.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Article eighteen of chapter forty-nine of the laws of nineteen hundred and nine, entitled “An act in relation to the public health, constituting chapter forty-five of the consolidated laws,” as renumbered article nineteen by section five of chapter one hundred and twenty-eight of the laws of nineteen hundred and eleven, is hereby made article twenty thereof, and sections three hundred and fifty and three hundred and sixty-one of such chapter are hereby renumbered sections three hundred and sixty and three hundred and sixty-one, respectively.

Sec. 2. Such chapter is hereby amended by inserting therein a new article, to be article nineteen thereof, to read as follows:

ARTICLE 19.

Operations for the Prevention of Procreation.

Section 350. Board of Examiners; compensation and expenses.
Section 350. Board of Examiners; compensation and expenses. Immediately after the passage of this act the Governor shall appoint one surgeon, one neurologist and one practitioner of medicine, each with at least ten years' experience in the actual practice of his profession, for a term of five years, to be known as the board of examiners of feeble-minded, criminals and other defectives, which board is hereby created. The compensation of the member of such board shall be ten dollars per diem for each day actually engaged in the performance of the duties of the board, and their actual and necessary traveling expenses. Any vacancies occurring in said board shall be filled by appointment of the Governor for the unexpired term.

Sec. 351. General powers and duties of the board; persons to be operated upon. It shall be the duty of the said board to examine into the mental and physical condition and the record and family history of the feeble-minded, epileptic, criminal and other defective inmates confined in the several state hospitals for the insane, state prisons, reformatories, and charitable and penal institutions in the state, and if in the judgment of the majority of said board procreation by any such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy, or imbecility, and there is no probability that the condition of any such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantial improved thereby, then said board shall appoint one of its members to perform such operation as shall be decided by said board to be most effective.

The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape or of such succession of offenses against the criminal law as in the opinion of the board shall be deemed to be sufficient evidence of confirmed criminal tendencies.

Sec. 352. Appointment of counsel to person to be operated upon. The board of examiners shall apply to any judge of the Supreme Court or county judge of the county in which said person is confined for the appointment of counsel to represent the person to be examined. Said counsel to act at a hearing before the judge and in any subsequent proceedings, and no order made by said board shall become effective until five days after it shall have been filed with the clerk of the court and a copy shall have been served upon the counsel appointed to represent the person examined and proof of service of said copy of the order to be filed with the clerk of the court. All orders made under the provisions of this act shall be subject to review by the Supreme Court or any justice thereof, and said court may upon appeal from any order grant a stay, which shall be effective until such appeal shall have been decided.

The judge of the court appointing any counsel under this act may fix the compensation to be paid him. No surgeon performing an operation under the provisions of this act shall be held to account therefor. The record taken upon the examination of every such inmate, signed by the said board of examiners, shall be preserved by the institution where said inmate is confined, and one year after the performance of the operation the superintendent or other administrative officer of the institution wherein such inmate is confined shall report to the board of examiners the condition of the inmate and effect of such operation upon such inmate, and a copy of the report shall be filed with the record of the examination.
LEGAL, LEGISLATIVE AND ADMINISTRATIVE ASPECTS OF STERILIZATION.

SEC. 353. Unauthorized and illegal operations. Except as authorized by this act, every person who shall perform, encourage, assist in, or otherwise permit the performance of the operation for the purpose of destroying the power to procreate the human species or any person who shall knowingly permit such operation to be performed upon such person, unless the same shall be a medical necessity, shall be guilty of a misdemeanor.

SECTION 3. This act shall take effect immediately.


The bill was introduced on February 8, 1913, by Representative W. H. Northrup, Luverne, North Dakota.

It passed the House February 17, 1913—72 ayes, 90 noes: the Senate March 6, 1913—34 ayes, 4 noes.

It was approved March 13, 1913, by Governor L. B. Hanna.

It appears on the North Dakota statutes as Chapter 56 of the laws of 1913.

AN ACT to prevent procreation of confirmed criminals, insane, idiots, defectives, and rapists; providing for a board of medical examiners and making a provision for carrying out of same.

Be it enacted by the Legislative Assembly of the State of North Dakota:

SECTION 1. Whenever the warden, superintendent, or head of any state prison, reform school, state school for feeble-minded, or of any state hospital or state asylum for insane shall certify in writing that he believes that the mental or physical condition of any inmate would be improved thereby, or that procreation by such inmate would be likely to result in defective or feebleminded children with criminal tendencies, and that the condition of such inmate is not likely to improve, so as to make procreation by such person desirable or beneficial to the community, it shall be lawful to perform a surgical operation for the sterilization of such inmate as hereafter provided.

For the purpose of carrying into effect the provisions of this act the chief medical officer of any such institution, the secretary of the state board of health and one other competent physician and surgeon, whose appointment is hereinafter provided for, shall constitute the board of examiners for such institution. The third member of such board shall be a competent physician and surgeon of good standing and of at least ten years' practice of his profession in North Dakota, who shall forthwith be appointed by the state board of control and who shall serve during the pleasure of said board of control. One such appointment may be made in each county in which one of such institutions is located, or one may be appointed to act for any two or more of such institutions to be named in the letter of appointment. The per diem compensation of such member so appointed shall be fixed by the state board of control in the letter of appointment and shall not be in excess of $10.00 per day, a duplicate of this letter shall be filed with the state auditor and the per diem and actual necessary expenses of such member shall be allowed and paid in the same manner as is provided for by law for the payment of the salaries and expenses of the members, agents, and employees of the state board of control.
SEC. 3. When the superintendent of any such institution shall deem it advisable that such operation be performed on any one or more of the inmates thereof he shall make such recommendation in writing, signed by him, and file one copy thereof with the board of control and one with the chief medical officer of such institution, whereupon the chief medical officer of such institution shall forthwith call a meeting of such board of examiners, to be held at such institution at a date not less than fifteen days after the issuance of such call, and such call shall be in writing, signed by such chief medical officer, and shall clearly set forth the date and object of such meeting and shall contain the names of all inmates whose cases are to be considered at such meeting.

SEC. 4. At such meeting such board of examiners shall diligently inquire into the mental and physical condition of each inmate so considered, and as far as practicable into his family history, and for that purpose any member of said board may administer an oath to any witness whom it is desired to examine, and such hearing may be adjourned from day to day, and, if necessary, sessions may be held elsewhere than at such institution.

SEC. 5. After fully inquiring into the condition of each such person such board of examiners shall make separate written findings for each of the persons whose condition has been inquired into, and such findings shall either order that such inmate be sterilized by such operation as may be deemed be or shall find that sterilization is not necessary or desirable, or shall continue the case to a time and place therein named or upon future call for further observation and inquiry, and such hearings shall be conducted according to the provisions of section 4 of this act. If such board in its findings order such operation upon such inmate, it shall, in such findings, designate what operation is to be performed and its purpose, and shall designate some skilled surgeon, who may not be one of their own number, who shall perform it.

SEC. 6. Such institutions shall keep all files in any proceedings under this act and full minutes of such meetings, and for that purpose the chief medical officer of such institution shall be the secretary of such board of examine and custodian of its records.

SEC. 7. When in the opinion of the chief medical officer of any such institution such operation would be necessary or desirable upon any inmate thereof, for any of the purposes herein set forth, and such inmate requests in writing that such operation be performed, or consents thereto in writing, he may perform or procure the performance of such operation without bringing the matter to the attention of such board of examination. When any such operation is performed under the provisions of this section it shall be the duty of the chief medical officer who performs or procures the performance of such operation to immediately report to the state board of control the details of such operation upon such blanks as the board of control may prescribe.

SEC. 8. Whenever the state's attorney of any county shall have reason to believe that any person who shall be convicted of felony has been twice or more previously convicted of felonies in North Dakota and elsewhere, it shall be the duty of such state's attorney to investigate and to secure at the expense of the county, transcripts of records of conviction from other counties and states, and also such evidence of identification as may be obtained. Such proof when obtained shall be forwarded to the state board of control, who shall thereupon notify the chief medical officers of the institution to which such person is committed and the secretary of the state board of health, and such case shall be dealt with in accordance with the procedure stated in section 1 of this act.

SEC. 9. No surgeon who shall skillfully perform any operation as authorized by this act shall be held accountable therefor, but the findings and order of this said board of examiners or the court, or the consent of such inmate and parents or guardian shall be his full warrant and authority therefor.

SEC. 10. It shall be the duty of the chief medical officer of any such institution in which any sterilized inmates are confined to make careful observa-
tion of each of such inmates, particularly with the view to ascertaining the effect of such operation upon the moral, mental and physical condition of such sterilized persons, and once a year, and oftener if called for by the Governor, to make report on each of such persons in writing, keeping a copy of such report on file in such institution and furnishing copies to the Governor, the state board of control, and the secretary of the state board of health.

Sect. 11. (Emergency.) Whereas, heredity plays a most important part in the transmission of crime, insanity, idiocy, and imbecility, and our institutions for degenerates are overcrowded on account of the lack of adequate means of checking the ever-increasing numbers of this class; and whereas, there is now no provision in law authorizing an operation for the sterilization of defective persons, this act shall take effect and be in force from and after its passage and approval.


The bill was introduced on January 13, 1913, by Representative Arthur Odell, of Allegan, Michigan.

It passed the House February 12, 1913—72 ayes, 16 noes; the Senate March 19, 1913—21 ayes, 9 noes.

It was approved April 1, 1913, by Governor Woodbridge N. Ferris.

It appears on the Michigan statutes of 1913 as Act No. 34. Public Acts 1913, page 52.

AN ACT to authorize the sterilization of mentally defective persons maintained wholly or in part by public expense in public institutions in this state, and to provide a penalty for the unauthorized use of the operations provided for.

The people of the State of Michigan enact:

SECTION 1. Authority is given to the management of any institution maintained wholly or in part by public expense, in whose custody may be held individuals who have been by a court of competent jurisdiction adjudged to be and who are mentally defective or insane, to render incapable of procreation, by vasectomy or salpingectomy or by the improvement of said surgical operation which is least dangerous to life and will best accomplish the purpose, any person who is mentally defective or insane.

SEC. 2. The boards of the aforesaid institutions and the physicians or surgeons in charge of each of said institutions shall for each of their respective institutions constitute a board, the duty of which shall be to examine such inmates of said institutions as are reported to them by the warden or medical superintendent to be persons by whom procreation would be inadvisable. Such board shall receive the report of insanity experts hereinafter mentioned, examine the physical and mental condition of such persons and their record and family history so far as the same can be ascertained, and if in the judgment of a majority of said board procreation by any such person would produce children with an inherited tendency to insanity, feeble-mindedness, idiocy, or imbecility, and there is no probability that the condition of such person so examined will improve to such an extent as to render procreation by any such
person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then said board shall direct a competent physician or surgeon, with such other assistants as may be necessary to perform the operation of vasectomy or salpingectomy, or any other operation or improvement on vasectomy or salpingectomy recognized by the medical profession, as the case may be, upon such person. Such operation shall be performed in a safe and humane manner, and the board making such examination, and the institution physician or surgeon, shall receive no extra compensation therefor: Provided, That at least thirty days' notice shall be given to the parents or guardian of such person before the performing of such operation; said notice to specify the purpose, time and place of such examination: Provided further, That when said parents or guardian object to the performance of such operation, then the question of the sanity of such person shall be referred to the probate court of the county in which the institution is located, where the question of the sanity and the necessity for this operation shall be determined as in other insane cases before such courts.

Sec. 2. In case an institution has no physician at its head authority given to the board of managers to cause such operation to be performed, to hire expert physicians to examine and report on the condition of the subject, and to perform the operation with such other assistants as may be necessary: Provided, Before said operation is ordered there shall first be secured from two physicians having qualifications prescribed by law for examiners in insanity a written statement or report that such operation is desirable in the interests of the patient or the good of the community: And, Provided further, That these physicians shall be allowed for their services the compensation fixed by statutes for the examination and certification of an insane person. The several sums necessary to carry out the provisions of this act shall be certified to be correct by the respective boards and shall be paid out of the general fund of the State upon the warrant of the auditor-general.

Sec. 3. In relation to each individual person sterilized under the provisions of this act, the board of control of the institution in which said person is an inmate shall file with the State Board of Public Health of Michigan a written record setting forth the name, age, sex, nationality, type or class of mental defectiveness of said person, the nature of the operation performed, the subsequent mental and physical condition as affected by said operation: Provided, That said records shall not be for public inspection, but may be open to inspection of the members of the board of control of the aforesaid institutions and of the members of the immediate family of the person operated upon, or any physician or surgeon designated by them.

Sec. 4. Except as authorized by this act, every person who shall perform, encourage, assist in, or otherwise promote the performance of either of the operations described in section one of this act, for the purpose of destroying the power to procreate the human species, or any person who shall knowingly permit either of such operations to be performed upon such person, unless the same shall be a medical necessity, shall be guilty of a felony, and upon conviction thereof shall be fined not more than one thousand dollars or imprisoned in the state prison not more than five years, or both at the discretion of the court before whom the said person or persons were so convicted.

11. **Sterilization Law of Kansas.**

The bill was introduced on February 7, 1913, by Representative A. B. Scott, of Jetmore, Kansas.

It passed the House February 24, 1913—85 ayes, 16 noes; the Senate March 10, 1913—29 ayes, 5 noes.
AN ACT to prevent the procreation of habitual criminals, idiots, epileptics, imbeciles, and insane, and providing a penalty for the violation thereof.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That it shall be the duty of managing officers of all state institutions of this state entrusted with the care and custody of habitual criminals, idiots, epileptics, imbeciles and insane, and they are hereby authorized and directed to obtain the advice and professional services of competent surgical assistants, who, jointly with the physician or surgeon in charge of the institution in which any of such inmates shall be, shall constitute the authority whose duty it shall be to examine such inmate or inmates of the several institutions as are deemed to be improper and inadvisable to allow to procreate. Such authority shall examine the physical and mental condition of such inmate or inmates, the history thereof so far as can be ascertained, and if, in the judgment of such authority, procreation by any such inmate or inmates would produce children with an inherited tendency to crime, insanity, feeblemindedness, epilepsy, idiocy, or imbecility, and there is no probability that the condition of any such inmate or inmates so examined will improve to such an extent as to render procreation by any such inmate or inmates advisable, or if the physical or mental condition of any such persons will be materially improved thereby, then said authority shall report their conclusions with a recommendation to the district court or any court of competent jurisdiction in and for the district from which such inmate or inmates has been committed to such institution or institutions. The court shall thereupon hear and determine the matter, and if satisfied that the subject is an habitual criminal within the meaning of this act, or is insane, an idiot, imbecile or an epileptic, and that the purposes of this act will be accomplished by such order, shall adjudge that such operation shall be performed, and shall appoint one of the authority signing such report to perform the operation of vasectomy or oophorectomy, as the case may be, upon such person. The county attorney of the county in which the hearing is had may be directed by the court to represent the state in the proceedings. Such operation shall be performed in a safe, and humane manner, and the surgeon performing the operation shall receive from the state such compensation for the service rendered as the board of administration shall deem reasonable, to be paid out of the maintenance fund of the institution in which such person is confined. Provided, An habitual criminal within the meaning of this act shall be a person who has been convicted of some felony involving moral turpitude.

Sec. 2. Except as authorized by this act, every person who shall perform, encourage, assist in, and otherwise promote the performance of either of the operations, described in section 1 of this act, for the purpose of destroying the power to procreate the human species, or any person who shall knowingly permit either of such operations to be performed upon such person, unless the same shall be a medical necessity, shall be fined not more than one thousand ($1000.00) dollars, or imprisoned in the county jail not exceeding one (1) year, or both.

Sec. 3. Any managing officers herein charged with any duty specified in section 1, who shall fail, neglect or refuse for sixty days or more in the per-
formance thereof, shall be guilty of a misdemeanor and subject to a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days, or both such fine and imprisonment.

Sec. 4. This act shall take effect and be enforced from and after its publication in the statute book.


The bill was introduced by Senator George E. Hoyt, of Menomonee Falls, Wisconsin.

It passed the Senate July 9, 1913—24 ayes, 3 noes; the House July 25, 1913—39 ayes, 37 noes.

It was approved July 30, 1913, by Governor Francis E. McKown.

It appears on the Wisconsin statutes as Chapter 693 of the Laws of 1913.

AN ACT to create section 561 jm of the statutes, relating to the prevention of criminality, insanity, feeble-mindedness and epilepsy.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is added to the statutes a new section to read: Section 561jm. The state board of control is hereby authorized to appoint from time to time one surgeon and one alienist of recognized ability, whose duty it shall be, in conjunction with the superintendents of the state and county institutions who have charge of the criminal, insane, feeble-minded, and epileptic persons, to examine into the mental and physical conditions of such persons legally confined in such institutions.

2. Said board of control shall at such times as it deems advisable submit to such experts and to the superintendent of any of said institutions names of such inmates of said institution whose mental and physical condition they desire examined, and said experts and the superintendent of said institution shall meet, take evidence and examine into the mental and physical condition of such inmates and report said mental and physical condition to the said state board of control.

3. If such experts and superintendent unanimously find that procreation is inadvisable it shall be lawful to perform such operation for the prevention of procreation as shall be decided safest and most effective; provided, however, that the operation shall not be performed except in such cases as are authorized by the said board of control.

4. Before such operation shall be performed it shall be the duty of the state board of control to give at least thirty days' notice in writing to the husband or wife, parent or guardian, if the same shall be known, and if unknown, to the person with whom such inmate last resided.

5. The said experts shall receive as compensation a sum to be fixed by the state board of control, which shall not exceed ten dollars per day and expenses, and such experts shall only be paid for the actual number of days consumed in the performance of their duties.
### Analysis of Sterilization Bills Vetoed.

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#### Date of Veto:
- March 30, 1905
- February 23, 1906
- January 31, 1913
- April 14, 1913

#### Persons Signed:
- Hiram Bingham
- Governor's Secretary

#### Basis of Selection:
- Inmates of every institution of the State
- Inmates of every institution of the State
- Inmates of State hospitals for the incurable

#### Executive Action Proposed:
- Committee of Experts and Board of Trustees: at least one sterilization procedure per day
- Committee of Experts: at least one sterilization procedure per day
- Board of Trustees: at least one sterilization procedure per day

#### Appropriations Available for Expenditures
- State hospitals for the incurable

#### State of Origin:
- Prevention of Etiology and Suppression

#### Governor's Reasons for Making Veto:
- Inmates of every institution of the State are to be sterilized.
- Inmates of every institution of the State are to be sterilized.
- Private insane institution.
- State hospitals for the incurable.

#### Analysis of Statute Revoked by Referendum.

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#### Date of Veto:
- November 4, 1913

#### Persons Signed:
- Governor

#### Basis of Selection:
- All inmates of the Omega State Insane Asylum, the Eastern Omega State Hospital, the State Institu-
  tions for Fumblers and the Omega State Parochy, who are present on the dates on which sterilization
  procedures are scheduled.

#### Executive Action Proposed:
- Committee of Experts and Board of Trustees: at least one sterilization procedure per day

#### Appropriations Available for Expenditures
- State hospitals for the incurable

#### State of Origin:
- Prevention of Etiology and Suppression

#### Governor's Reasons for Making Veto:
- Inmates of every institution of the State are to be sterilized.
- Inmates of every institution of the State are to be sterilized.
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- All inmates of the Omega State Insane Asylum, the Eastern Omega State Hospital, the State Institu-
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- Committee of Experts and Board of Trustees: at least one sterilization procedure per day

#### Appropriations Available for Expenditures
- State hospitals for the incurable

#### State of Origin:
- Prevention of Etiology and Suppression

#### Governor's Reasons for Making Veto:
- Inmates of every institution of the State are to be sterilized.
- Inmates of every institution of the State are to be sterilized.
- Private insane institution.
- State hospitals for the incurable.
6. The record taken upon the examination of every such inmate shall be preserved and shall be filed in the office of said board of control at Madison, Wisconsin, and semi-annually after the performing of the operation, the superintendent of the institution wherein such inmate is legally confined shall report to said board of control the condition of such inmate and the effect of such operation upon such inmate.

7. The state board of control shall report biennially in its regular biennial report the number of operations performed under the authority of this section and the result of such operations.

8. There is hereby appropriated out of the state treasury, not otherwise appropriated, a sufficient amount of money to carry into effect the purposes of this section not to exceed two thousand dollars.

SECTION 2. This act shall take effect upon passage and publication.

CHAPTER III.

BILLS VETOED: TEXTS, VETO MESSAGES, AND HISTORIES.

A. TABULAR ANALYSIS OF BILLS VETOED.

Up to the present time the legislatures of four states have passed bills which have been vetoed by their respective governors. The accompanying table gives an analysis of these bills and veto messages.

B. TEXTS AND HISTORIES OF BILLS VETOED.

The full texts of these bills and veto messages follow:

1. PENNSYLVANIA.

Senate Bill 35.

a. TEXT OF BILL.

AN ACT for the prevention of idiocy.

WHEREAS, Heredity plays a most important part in the transmission of idiocy and imbecility; therefore,

SECTION 1. Be it enacted, &c., That on the first day of July after the passage of this bill, it shall be compulsory for each and every institution in the state, entrusted exclusively or especially with the care of idiots and imbecile children, to appoint upon its staff at least one skilled surgeon, of recognized ability, whose duty it shall be, in conjunction with the chief physician of the institution to examine the mental and physical condition of the inmates.

If, in the judgment of this Committee of Experts and Board of Trustees, Procreation is inadvisable, and there is no probability of improvement of the mental condition of the inmate, it shall be lawful for the surgeon to perform
such operation for the prevention of procreation as shall be decided safest
and most effective; but this operation shall not be performed except in cases
that have been pronounced non-improvable after one year's test in institution.

b. VETO MESSAGE.

Commonwealth of Pennsylvania,
Executive Department,
Harrisburg, March 30, 1905

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

Gentlemen: I return herewith, without my approval, Senate Bill No. 35
entitled “An act for the prevention of idiocy.” This bill has what may be called with propriety an attractive title. If idiocy could be prevented by an act of assembly, we may be quite sure that such an act would have long been passed and approved in this state, and that such laws would have been enacted in all civilized countries. The subject of the act is not the prevention of idiocy, but it is to provide that in every institution in the state, entrusted with the care of idiots and imbecile children, a neurologist, a surgeon and a physician shall be authorized to perform an operation upon the inmates “for the prevention of procreation.” What is the nature of the operation is not described, but it is such an operation as they shall decide to be “safest and most effective.” It is plain that the safest and most effective method of preventing procreation would be to cut the heads off the inmates, and such authority is given by the bill to this staff of scientific experts. It is not probable that they would resort to this means for the prevention of procreation, but it is probable that they would endeavor to destroy some part of the human organism. Scientists, like all other men whose experiences have been limited to one pursuit, and whose minds have been developed in a particular direction, sometimes need to be restrained. Men of high scientific attainments are prone, in their love for technique, to lose sight of broad principles outside of their domain of thought. A surgeon may possibly be so eager to advance in skill as to be forgetful of the danger to his patient. Anatomists may be willing to gather information by the infliction of pain and suffering upon helpless creatures, although a higher standard of conduct would teach them it is far better for humanity to bear its own ills than to escape them by knowledge only secured through cruelty to other creatures. This bill, whatever good might possibly result from it if its provisions should become a law, violates the principles of ethics. These feeble-minded and imbecile children have been entrusted to the institutions by their parents or guardians for the purpose of training and instruction. This bill assumes that they cannot be so instructed and trained. Moreover, the course it is proposed to pursue would have a tendency to prevent such training and instruction. Everyone knows, whether he be a scientist or an ordinary observer, that to destroy virility is to lessen the capacity, the energy and the spirit which lead to effort. The bill is, furthermore, illogical in its thought. Idiocy will not be prevented by the prevention of procreation among these inmates. This mental condition is due to causes many of which are entirely beyond our knowledge. It existed long before there were ever such inmates of such institutions. If this plan is to be adopted, to make it effective it should be carried into operation in the world at large and not in institutions where the inmates are watched by nurses, kept separate, and have all the care which is likely to render procreation there very rare, if not altogether impossible. In one of these institutions, I am reliably informed,
there have only been three births in ten years. A great objection is that the bill would encourage experimentation upon living animals, and would be the beginning of experimentation upon living human beings, leading logically to results which can readily be forecasted. The chief physician, in charge at Elwyn, has candidly told us, in an article recently published upon “Heredity,” that “Studies in heredity tend to emphasize the wisdom of those ancient peoples who taught that the healthful development of the individual and the elimination of the weakling was the truest patriotism—springing from an abiding sense of the fulfillment of a duty to the state.” To permit such an operation would be to inflict cruelty upon a helpless class in the community which the state has undertaken to protect. However skillfully performed, it would at times lead to peritonitis, blood poisoning, lockjaw and death.

For these reasons the bill is not approved.

SAML. W. PENNYPACKER.

2. OREGON.

Passed February, 1909.


a. TEXT OF BILL.

For an act entitled an act to prevent procreation of confirmed criminals, insane persons, idiots, imbeciles and rapists; providing that superintendents and boards of managers of institutions where such persons are confined shall have the authority and are empowered to appoint a committee of experts, consisting of two (2) physicians, to examine into the mental condition of such inmates, and to define who shall be deemed confirmed criminals within the provisions of this act.

Be it enacted by the people of the State of Oregon:

Be it enacted by the Legislative Assembly of the State of Oregon:

SECTION 1. From and after the passage of this act it shall be compulsory of each and every institution in the state intrusted with the care of confirmed criminals, insane persons, idiots, rapists, and imbeciles, to appoint upon its staff, in addition to the regular institutional physicians, two (2) skilled surgeons of recognized ability, whose duty it shall be, in conjunction with the chief physician of the institution, to examine the mental and physical condition of such inmates as are recommended by the institutional physician and board of managers. If, in the judgment of this committee of experts and the board of managers, procreation is inadvisable, and there is no probability of improvement of the mental condition of the inmates, it shall be lawful for the surgeons to perform such operation for the prevention of procreation as shall be decided safest and most effective; but this operation shall not be performed except in cases that have been pronounced unimprovable.

The term “confirmed criminals,” as contained in this act, shall be deemed to apply to and include all persons serving a third term in any penitentiary or penal institution upon conviction of a felony.

b. VETO MESSAGE.

Salem, February 22, 1909.

To the President and Members of the Senate:

I return you herewith Senate Bill No. 68, with my disapproval. It provides to make it compulsory for each and every institution in the state intrusted with the care of confirmed criminals, insane persons, idiots, rapists and
imbeciles to appoint upon its staff, in addition to the regular institutional physicians, two skilled surgeons of recognized ability, whose duty it shall be, in conjunction with the chief physician of the institution, to examine the mental and physical condition of such inmates as are recommended by the institutional physician and board of managers. If, in the judgment of this committee of experts and the board of managers, procreation is inadvisable, and there is no probability of improved mental condition of the inmate, it shall be lawful for the surgeons to perform such operation for the prevention of procreation as shall be decided safest and most effective, but the operation shall not be performed except in cases that have been pronounced unimprovable.

It will be observed from a reading of the act that incurable insane and criminals are so confused and confounded with each other that it is difficult to judge whether criminals are to be sterilized because they are, in fact, mentally unsound or because they are criminals who are serving a third term in the penitentiary upon conviction of a felony. The bill is not drawn to meet the conditions of institutional life in Oregon, because the penitentiary is not governed by a board of managers, but by the Governor of the state, with the assistance of a superintendent and wardens, while the asylum is under the direct supervision of a board of trustees, a superintendent and a corps of assistants. A bill departing so radically from established methods in Oregon ought to be skillfully framed and remove any ground for misunderstanding or misconstruction of its terms.

Besides these objections, I am not entirely satisfied that all of the 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 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.

I therefore return said measure to you with my veto.

GEO. E. CHAMBERLAIN, Governor.

The Oregon bill was promoted by Dr. Owens-Adair, of Portland. After vetoing this bill Governor Chamberlain wrote the following letter to Dr. Owens-Adair:

February 25, 1909.

Doctor Owens-Adair,
Portland, Oregon.

Dear Mrs. Adair—

After looking over Senate Bill Number 68 I have concluded that it is so loosely drawn and poorly safeguards the rights of the unfortunate (against whom it is directed) that I deemed it my duty to veto it. When I first talked to you about the matter, without knowing the terms of the Bill in detail, I was disposed to favor it, but I think such a Bill ought to be so carefully safeguarded that no abuses could be practiced against it, and I feel that this is not the case with the bill under consideration.

I have the honor to remain,

Yours very respectfully,

GEO. A. CHAMBERLAIN

3. VERMONT.

A. TEXT OF BILL.

AN ACT to authorize and provide for the sterilization of imbeciles, feeble-minded and insane persons, rapists, confirmed criminals and other defectives.
It is hereby enacted by the General Assembly of the State of Vermont:

SECTION 1. A board of examiners of feeble-minded, criminals and other defectives is hereby created; and forthwith after the passage of this act, and biennially thereafter, the governor shall appoint one neurologist, one surgeon and one practitioner of medicine, each with at least six years’ experience in the actual practice of his profession, for the term of two years from and including the first day of December of the year of appointment, as members of said board, who shall be sworn to a faithful discharge of their duties. The members of such board shall be paid ten dollars for each day actually spent in the performance of their duties, and their actual and necessary traveling expenses. A vacancy occurring in said board shall be filled by the governor for the unexpired term.

SEC. 2. Said board shall examine into the mental and physical condition and the record and family history of the insane, feeble-minded, epileptic, criminal and other defective inmates confined in the hospitals for the insane, state prison, reformatories, and charitable and penal institutions in the state; and if it appears to said board that procreation by any such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, epilepsy, idiocy, or imbecility, said board shall appoint a time and place for hearing thereon within the town where such person is confined, and shall deliver to such person a notice in writing of such hearing, which shall plainly state the time, place and purpose thereof, and shall be delivered to him by some member of said board not less than six nor more than thirty days before the day of said hearing. Said board shall be present at the time and place appointed for such hearing, and shall make such further examination and investigation with respect to such person as shall seem to said board necessary, and shall hear such person in his defense if he appears and requests a hearing.

SEC. 3. If, in the judgment of all members of said board, after said examination and hearing, procreation by such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, epilepsy, idiocy or imbecility, and if there is no probability that the condition of such person will improve to such an extent as to render procreation by such person advisable, or if, in the judgment of said board, the physical or mental condition of such person will be substantially improved thereby, and said board shall unanimously so find, said board shall order such an operation to be performed on such person for the prevention of procreation as shall be decided by said board to be safe and most effective, and shall appoint some member of said board to perform such operation, who shall perform it.

SEC. 4. Such order shall be in writing, signed by all members of said board, and shall bear the date of its issue, and shall contain the name of the person upon whom the operation is to be performed, the character of the operation and the name of the member of the board who is designated to perform it, and shall be filed by said board in the office of the county clerk of the county where such person resides.

SEC. 5. Before thus filing said order, said board shall make a copy thereof and deliver the same to the member of said board designated to perform such operation; and said order shall be his full warrant and authority for performing such operation, and no person performing an operation under the provisions of this act, in a proper and skillful manner, shall be held to account therefor in any court. But no operation so ordered shall be performed until fifteen days after the filing of said order in the office of the county clerk.

SEC. 6. Persons who shall come within the provisions of this law as criminals, and not otherwise, shall be those who have been convicted of the crime of rape, or of such succession of offenses against the criminal law as, in the opinion of said board, shall be deemed to be sufficient evidence of confirmed criminal tendency.

SEC. 7. Said board shall keep a record of its examinations, hearings and orders, and in each case where an operation is performed under its order said...
board shall file with the superintendent or other administrative officer of the institution where such person is confined a copy of the record of the examination made by said board in such case; and one year after the performance such operation said superintendent or other administrative officer shall report to said board the condition of such inmate and the effect of such operation upon such inmate.

**SEC. 8.** This act shall not apply to children under the age of puberty nor to women forty-five years of age and over.

**SEC. 9.** Except as authorized by this act, a person who shall perform or assist in performing an operation for the purpose of destroying the power to procreate the human species, or a person who shall knowingly permit such operation to be performed upon him, unless the same shall be a medical necessity, shall be fined not more than one thousand dollars or be imprisoned no more than five years, or both.

**SEC. 10.** Whenever a person shall be adjudged guilty of rape, or shall be a third time convicted of felony, the court may, in addition to such other sentence as may be imposed, direct an operation to be performed upon such son for the purpose of preventing procreation, by a member of the board of examiners of feeble-minded, criminals and other defectives to be designated by said court, and such member of said board shall perform an operation for such purpose, and the sentence and order of the court shall be his full warrant and authority therefor.

**SEC. 11.** The sum of one thousand dollars is hereby annually appropriated to carry out the provisions of this act.

**SEC. 12.** This act shall take effect from its passage.

b. VETO.

The Vermont veto was based upon an opinion rendered by Attorney-General, Hon. R. E. Brown. The opinion follows:

Referring to section 2 of this act, you will notice that the act applies only to those of the unfortunate classes named who are unfortunate enough to be actually confined “in the hospitals for the insane, state prison, reformatories and charitable and penal institutions in the state.” Those equally unfortunate, except in the matter of actual confinement, including the criminals whose sentences have been completed, and all having greater opportunity to perpetuate the evil which this bill seeks to guard against, are immune from the operation of this act.

In my judgment, this is an unfair, unjust, unwarranted, and inexcusable discrimination which ought not to be, and cannot be tolerated under the supreme law, the Constitution of this state.

If there be anything of merit in the claims made by the advocates of this measure, and I do not attempt to say there is not, just why the feeble-minded or imbecile wife of a kind-hearted and tolerant husband should be permitted to give birth to offspring is quite beyond my comprehension, and yet instances of this kind are within the knowledge of almost every person of mature years. Instances of this kind are not confined to cases of the imbecile wife, but suggestion applies equally to cases of the degenerate and imbecile husband of the kind-hearted and tolerant wife who has sufficient means and sufficient pride to, in a measure, conceal the actual condition of her husband.

In short, the idea meant to be conveyed is this, that this section contains such an unreasonable discrimination and classification as renders the act void under the Constitution of this state.

Again referring to section 9 of this act, it is here provided that the act shall not apply to women over forty-five years of age. While it may be true that women “forty-five years of age or over,” as a general rule, do not conceive and give birth to children, it is an undisputed fact, well known not
only to the medical profession, but in common experience, that women of that age do conceive and give birth to children. Here, again, is an unwarranted and inexcusable discrimination and classification which renders the act, in my judgment, void under our Constitution.

In this connection permit me to say that this discrimination would seem most unnecessary and unwarranted, because if it be true, as the act assumes, that conception in women of forty-five years or over is impossible, the execution of this law would not deprive the individual of a God-given power or function.

Again calling your attention to the provisions in Section 2, which perhaps I may be permitted to call the "machinery" for carrying the provisions of this act into effect, it seems apparent to me that these provisions are wholly inadequate, unjust, and insufficient. In this connection it ought to be sufficient to call attention to the fact that this act applies to the insane and feeble-minded confined in hospitals for insane and charitable institutions of this state and that the provisions for final hearing provides only for notice in writing delivered to such insane or feeble-minded persons, "which shall plainly state time, place and purpose thereof," and in case the person is a minor or under guardianship, a copy of such notice shall be mailed to such parent or guardian, as the case may be, addressed to his last known residence at least six days before said hearing. There is also this further provision that the board provided for "shall hear such person in his defense, if he appears and requests such hearing. And at such hearing such person shall have a right to introduce witnesses and proofs and to be represented by counsel. Said board shall give such person a fair and impartial trial." Absolutely no provision is made to enable such insane person or persons confined in a charitable institution to appear before said board and secure such impartial trial, and the fact that such person is absolutely incapable of making a request or of performing any legal act, is utterly ignored. It is also provided that upon such proof as may be adduced said board may decide the question involved. From their decision no appeal of any kind is provided for. There is absolutely no provision regarding the quality of the evidence which said board may receive. In other words, under the provisions of this act, the decision of the board is absolute and final. In this respect an act of this kind is unheard of and unwarranted. Under such a provision, land could not be taken for a public highway, as has been repeatedly held by the Supreme Court of this state, it is not due process of law. Much less ought it to be enacted that individuals may be deprived of God given powers, functions and rights in such manner.

Perhaps I ought also to call your attention to section 6 of this act. It is in this section provided that "persons who shall come within the provisions of this law as criminals, and not otherwise, shall be those who have been convicted of the crime of rape or of such succession of offenses against the criminal law as in the opinion of said board shall be deemed to be sufficient evidence of confirmed criminal tendency." Under this section and the other provisions of this act, it is in effect provided that this board may inflict an additional penalty for a crime long before committed and the legal penalty of which has been already paid, and perhaps upon a person who has been reformed by the payment of such penalty as the law presumes until further offense is committed. It seems hardly necessary to suggest that such a provision contravenes the Constitution.

But the climax of absurdity and inconsistency seems to have been reached in section 7 of this measure. Under the provisions of this section both lunatic and imbecile are permitted to do that which has never been permitted in any court of justice in this land, viz, by agreement imposed upon themselves such penalty as under this act may be imposed upon criminals after full hearing and the introduction of evidence. To say that such a provision is unwarranted and absurd is putting it mildly.
4. NEBRASKA.

Senate File No. 132. Thirty-third Session.

a. TEXT OF BILL.

A BILL

For an act to prevent the procreation of certain classes of criminals and feeble-minded and other defectives; to provide for the appointment of a board of examiners by the board of commissioners of public institutions, said board of examiners to consist of two physicians and to fix their compensation, powers and duties; to provide for the appointment of counsel for the person or persons to be operated upon; to provide for the keeping of a record of the proceedings for such board of examiners and for an appeal from the order of such board; and to declare illegal all operations to prevent procreation of the human species except as authorized by this act, unless the same shall be a medical necessity, and declaring such illegal operations a felony and fixing a penalty therefor.

Be it enacted by the people of the State of Nebraska:

SECTION 1. Immediately after this act has gone into effect the board of commissioners of state institutions shall appoint two physicians, each with at least ten years' experience in the actual practice of his profession; one for a term of two years and one for a term of four years, to be known as the board of examiners of criminals, feeble-minded and other defectives, which board is hereby created. The compensation of the members of such board shall be ten dollars per diem for each day actually engaged in the performance of the duties of the board, and the actual and necessary traveling expenses. Whenever the term of a member of the board is about to expire said board of commissioners shall appoint a physician for the ensuing term. Any vacancies occurring in said board shall be filled by appointment by said board of commissioners for the unexpired term. All appointments so made shall be of physicians with at least ten years' experience, as hereinbefore provided.

SEC. 2. It shall be the duty of the said board to examine into the mental and physical condition and record and family history of the feeble-minded, epileptic, criminal, and other defective inmates confined in the several state hospitals for the insane, state prisons, reformatories and charitable and penal institutions, and those for the care of defectives in the state, and if, in the judgment of said board, procreation by any such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy, or imbecility, and there is no probability that the condition of any such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then said board shall appoint one of its members to perform such operation for the prevention of procreation as shall be decided by said board to be most effective.
The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape or of such succession of offenses against the criminal law as in the opinion of the board shall be deemed to be sufficient evidence of confirmed criminal tendencies.

Sec. 3. The board of examiners shall apply to the District Court or any judge thereof at chambers in the county in which said person or persons to be examined is confined, for the appointment of counsel to represent such person or persons. Said counsel shall act at the hearing before the board of examiners and at any subsequent proceeding therein, and no order made by said board shall become effective until five days after it shall have been filed with the clerk of the District Court of said county, and a copy shall have been served upon the counsel appointed to represent the person examined and proof of service of said copy shall have been filed with the clerk of said court.

All orders made under the provisions of this act shall be subject to review by the District Court or any judge thereof at chambers of the county in which the original examination took place, and said court or judge may upon the filing of such appeal grant a stay which shall be effective until such appeal shall have been decided. The judge of the court appointing any counsel under this act may fix the compensation to be paid him. No physician performing an operation under the provisions of this act shall be held to account therefor. The record taken upon the examination of every such inmate signed by the said board of examiners shall be preserved by the institution where said inmate is confined and one year after the performance of the operation the superintendent or other administrative officer of the institution wherein such inmate is confined shall report to the board of examiners the condition of the inmate and the effect of such operation upon such inmate, and a copy of the report shall be filed with the record of the examination.

Sec. 4. Except as authorized by this act, every person who shall perform, encourage, assist in, or otherwise permit the performance of the operation for the purpose of destroying the power to procreate the human species or any person who shall knowingly permit such operation to be performed upon such person unless the same shall be a medical necessity, shall be guilty of a felony.

Sec. 5. Any person found guilty under the terms of this act shall be confined in the penitentiary not less than one year nor more than five years, and shall, moreover, be liable to the suit of the party injured.

b. VETO MESSAGE.

To Honorable S. R. McKelvie, Lieutenant Governor and President of the Senate:

I herewith return, without my approval, Senate File No. 132, an act entitled:

An act to prevent the procreation of certain classes of criminals and feeble-minded and other defectives; to provide for the appointment of a board of examiners by the board of commissioners of public institutions, said board of examiners to consist of two physicians and to fix their compensation, powers and duties; to provide for the appointment of counsel for the person or persons to be operated upon; to provide for the keeping of a record of the proceedings of such board of examiners and for an appeal from the order of such board; and to declare illegal all operations to prevent procreation of the human species except as authorized by this act unless the same shall be a medical necessity, and declaring such illegal operations a felony, and fixing a penalty therefor.

This act is so far reaching in its consequences and so intimately related to the social life of mankind, that legislative action should not be taken thoughtlessly or hurriedly. This proposed legislation is new and practically untried; at best it is only an experiment and it seems more in keeping with the pagan age than with the teachings of Christianity. Man is more than an animal.
There is no urgent demand for the passage of this kind of legislation. Mutilating the human body, either as a punishment for crime or as a preventive thereof, is drastic in the extreme and there is grave doubt in my mind if it does not violate Section 9, Article I, of the Bill of Rights, which prohibits cruel and unusual punishment. I believe serious objections may be made to it because of its violation of other provisions of the Bill of Rights, and the act itself appears out of harmony with Section 11, Article III, of the Constitution, in that it contains more than one subject.

There is no valid reason why this should be made to apply to wards of the state. These wards are under the care and control of superintendents appointed by the state, the different sexes are segregated and the danger sought to be obviated by this act, is already well guarded against.

While I am heartily in favor of the provisions of section 4 of this act and would be pleased to sign a law making it a felony for any person to perform any operation for the purpose of destroying the power to procreate the human species and making it a felony for any person to permit such an operation to be performed, still the other provisions referred to above are that I must in conscience withhold my approval.

Respectfully submitted,

JOHN H. MOREHEAD,
Governor.

Executive Office, Lincoln, Nebraska, April 14, 1913.

C. PROPOSED STERILIZATION LAW REVOKED BY REFERENDUM.


The bill was introduced on January 15, 1913, by Representative L. G. Lewelling, of Albany, Oregon. It passed the Senate by a vote of 16 ayes to 11 noes; the House by 49 ayes to 8 noes. It was approved on February 18th by Governor Oswald West. It was to have appeared on the Oregon Statutes as Chapter 63, General Laws of Oregon, 1913 and was designed to take effect on June 3rd, 1913, but the referendum was on May 31st, 1913, legally invoked for November 4th, 1913. This held the law in abeyance pending the decision of the people. In Oregon it requires the petition of 5% (in this case, 6,312) of the legal voters in order to invoke the referendum; 8,275 signers were actually secured. Such a measure is upheld if it receives the indorsement in referendum of a “majority of the votes cast thereon.” The vote on November 4th, 1913, was—Yes, 41,767; no, 53,319. The total Oregon vote for Governor in 1910 was 117,690; for President in 1912 was 137,040. The vote was therefore apparently representative of the entire electorate.

The history of the sterilization legislation in this state is quite remarkable. A law was vetoed by Governor Chamberlain in 1909; in
1913 a new law was passed and approved by Governor West, but was revoked by referendum before it went into effect. It is interesting to learn that not only was the referendum against the statute led by a woman, but that a woman physician, Dr. Owens-Adair, of Warrenton, Oregon, was the leader in the original movement for legalized eugenic sterilization, and was the author of the bill vetoed by Governor Chamberlain. So far as the committee is aware, Oregon is the only state having an organized opposition to sterilization.

The 1913 proposed law was vigorously opposed by the Anti-Sterilization League, of which Mrs. Lora C. Little is vice-president. Through the agency of this league the referendum petition was circulated, and the requisite number of signers were secured.

In their petition they state:

REFERENDUM PETITION.

This is to refer to the people of the state for their approval or rejection House bill No. 69, passed by the Twenty-seventh Legislative Assembly of the State of Oregon, providing for sterilization of criminals, etc.

OBJECTIONS TO THE ACT.

1. The act is loosely drawn.
2. The operation is not specified, but may be whatever the State Board of Health decides upon. Cutting off an arm or leg, or trepanning the skull, would satisfy the requirements of the law.
3. Sterilization is not specified, but if intended, there are several operations possible. Some of these would not in least alter the criminal tendencies of rapists. This is the case with the operation now employed in Indiana, and might be here under this law.
4. The sterilizing operation applied to women may be a serious one endangering life.
5. Cutting of the generative organs directly affects the brain and lessens the probability of the cure of the insane. It also reduces the mental power of the feeble-minded, whom the state is now seeking to raise in power by training and education.
6. The claim that such a law is necessary to protect the future of the race is unfounded and wholly disproved by the history of penal colonies. Virginia and Australia are examples. Both these communities today rank high in morals and vitality, though many of their early settlers were deported criminals. Australia had 100,000 of these as the foundation of this great commonwealth.

ANTI-Sterilization League.

Room 705 Swetland Building, Portland. Phone Main 4095.

These objections present a curious combination of truth and ignorance. Specifically, objections one, two and three appear sound;
number four is unduly emphasized; number five is false, and number six is biased, for it denies the element of heredity in human affairs and displays great ignorance of the facts of history.

Concerning their campaign letter, Miss Little says:

Of the printed circulars we distributed less than thirty thousand. We carried on no campaign of public speaking; the election therefore may be said to have represented the spontaneous thought of the people practically uninfluenced by special advocates.

On several occasions the secretary of the State Board of Health publicly declared his abhorrence of the law, maintaining that it would increase vice and crime and lead to further spread of venereal disease. I surmise that the did not relish his own position as the official on whom the execution of the law depended, and perhaps feared for his personal safety should he be forced to carry it into effect.

The agitation will at least be educational, for the principle has ardent supporters as well as valiant enemies in Oregon. If the revoking of this proposed law results in the agitation and enactment a more carefully drawn law based upon purely eugenical motives, will prove to have been a good thing.

On August 13, 1913, Dr. R. E. Lee Steimer, Superintendent of the Oregon State Hospital, wrote:

At Oregon State Hospital several men have been castrated for sexual perversion—consent of patient and relatives in writing; also a number of ovariotomies, with consent of patient and nearest relatives, for flagrant masturbation; also a considerable number of tubes ligated and cut, with consent in writing. (Exact number not obtainable.)

Concerning the law just revoked, Dr. Steimer said:

The present law is inadequate because it applies mostly to cases that would remain in confinement anyway. It is most needed for those who leave the institution.


AN ACT

Entitled an Act to protect the public peace, health and safety from habitual criminals, moral degenerates and sexual perverts; to require the Superintendent of the Oregon State Insane Asylum, the Eastern Oregon State Hospital, the State Institution for Feeble-Minded, and the Oregon State Penitentiary to report quarterly the names, records, condition and character of all inmates of their respective institutions who are habitual criminals,
Be it enacted by the people of the State of Oregon:

SEC. 1. It is hereby declared that habitual criminals, moral degenerates and sexual perverts are menaces to the public peace, health and safety. Habitual criminals are those who have been three or more times convicted of a felony in the courts of any state and sentenced to serve in the penitentiary therefor. Moral degenerates and sexual perverts are those who are addicted to the practice of sodomy or the crime against nature, or to other gross, bestial, and perverted sexual habits and practices prohibited by statute. Any person convicted of rape when the offense is committed on a female over the age of consent as fixed by Lord's Oregon Laws, or on a female under the age of fourteen years, with or without consent, or on a female between fourteen years and the age of consent, where rape is committed as defined by Lord's Oregon Laws for rape over the age of consent, shall be deemed to be a moral degenerate under the terms and provisions of this act; provided, however, that in any case where the conviction of rape is secured by circumstantial evidence only, other than the evidence of the prosecutrix, this law shall not apply.

SEC. 2. It shall be, and is hereby declared the duty of the Superintendent of the Oregon State Insane Asylum, the Superintendent of the Eastern Oregon State Insane Asylum, the Superintendent of the State Institution for Feeble-Minded, and the Superintendent of the Oregon State Penitentiary, to report on the first day of each quarter to the State Board of Health the names, record, character and condition of any and all inmates of their respective institutions who may be habitual criminals, moral degenerates or sexual perverts.

SEC. 3. Immediately upon its receipt of the reports provided for in section 2, the State Board of Health shall investigate, or cause to be investigated, each case so reported to it. Such investigation shall be conducted in a careful and thorough manner and in accordance with the recognized rules of medical science. A full and complete report of such investigation shall be prepared and preserved in the records of the said board, and a copy thereof shall be furnished to the Superintendent of the institution in which the inmate is confined. If the said investigation shall disclose that the inmate, so reported upon, is a habitual criminal, or is a moral degenerate, or a sexual pervert, the said board shall so certify in an order to the superintendent of the institution in which the inmate is confined, directing the said superintendent to perform, or cause to be performed, such surgical operation upon the said inmate as, in the opinion of the said State Board of Health, may be necessary for the protection of the peace, health and safety of the State. Any such inmate desiring to appeal from the decision of the said Board, or in case the person is under guardianship or disability, then the guardian of said person may take an appeal to the Circuit Court of the county in which the institution, in which the person is confined, is located. A notice of appeal shall be all that is necessary to make the appeal. The board shall certify to the said Circuit Court the report of the investigations hereinbefore described.
The trial on such appeal shall be a trial de novo at law as provided by the statutes of this state for the trial of actions at law. If the Court or jury shall find that the person accused is a habitual criminal, moral degenerate or pervert, as hereinbefore defined, said Court shall enter a judgment ordering that the findings of the said Board shall be carried out as hereinbefore provided.

Sec. 4. Upon receipt of the order from the State Board of Health, provided for in section 3, the superintendent of the institution to which it is directed shall, and it is hereby made his lawful duty, to perform, or cause to be performed, such surgical operation as may be specified in the order of the State Board of Health. All such surgical operations shall be performed with a due regard for the physical, mental and moral betterment of the inmate and for the protection of the peace, health and safety of the public.

Sec. 5. The provisions of this act shall apply to both male and female inmates of any of the institutions designated herein.

CHAPTER IV.

BILLS INTRODUCED BUT NOT PASSED.

1. GENERAL STATEMENT

In order to show the trend of legislative effort in the field of eugenic sterilization, the accompanying table, analyzing bills which have been introduced and are either defeated or still pending in the various legislatures, is presented. There may have been, and doubtless were, other bills of similar nature introduced, but the committee, after diligent inquiry in all of the states, is unable to find definite records or copies of such.

It is believed by the committee that by the comparison of bills defeated; bills still pending, bills which became laws, bills which were vetoed and the model statute recommended in Chapter IX. of report, the persons having in charge the movement for enacting eugenic sterilization laws in the different states will find valuable data for their guidance.

2. TABULAR ANALYSIS OF BILLS INTRODUCED BUT NOT PASSED.

CHAPTER V.

LITIGATION AND LEGAL OPINION.

The recent American sterilization laws present new and heretofore untried agencies for social betterment. A wide public sentiment demanding legislative action has never existed. Neither has there been much pressure exerted upon the nominal executive agents
<table>
<thead>
<tr>
<th>State</th>
<th>Date</th>
<th>By W.</th>
<th>House No.</th>
<th>Pursuance to Be in Force of the Bill Becomes a Law</th>
<th>Bills of Selection of Individuals</th>
<th>Executive Agent Proposed</th>
<th>Appropriations to Be Available</th>
<th>Type of Operation Authorized</th>
<th>From Whom</th>
<th>Remarks</th>
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<tr>
<td>ILLINOIS</td>
<td>March 100</td>
<td>Mr. W.</td>
<td>Senate Bill No. 249</td>
<td>Increase of each and every institution of this State so erected, with the care of mentally diseased, idiotic, and imbecile persons, which are maintained by the people in their several counties, or by the people at large, or by the State, is hereby authorized and required, under the direction of a Board of Managers</td>
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<td></td>
<td>January 24, 1911</td>
<td>Mr. Martin</td>
<td>House Bill No. 49</td>
<td>In cases of all public institutions erected or continued body of medical officers, doctors, medical and dental officers, and licensed practitioners, and for the medical and dental care of the inmates of the patients will be substantially improved thereby</td>
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<td></td>
<td>March 18, 1912</td>
<td>Mr. W.</td>
<td>Senate Bill No. 251</td>
<td>Final decision of court upon recommendation of the Board of Managers, in charge of the institution, in conjunction with the state medical officer, and the Board of Managers, in charge of the institution, in conjunction with the state medical officer, and in both cases, at the time, for the expense of the medical and dental care of the inmates</td>
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<td>MINNESOTA</td>
<td>January 25, 1913</td>
<td>Mr. G.W. Brown</td>
<td>House Bill No. 124</td>
<td>In cases of any State insane, State reformatories, State training institutions, State reformatory for boys, State training institution for girls, State reformatory for freedmen, and orphan schools, of the Board of Managers</td>
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<td>March 15, 1913</td>
<td>Mr. O'Neil</td>
<td>House Bill No. 207</td>
<td>In cases of every institution so erected and operated in the State, and also in cases of all public institutions erected or continued to be in operation</td>
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<td>NEW HAMPSHIRE</td>
<td>May 13, 1914</td>
<td>Mr. O'Neill</td>
<td>House Bill No. 582</td>
<td>Increase of each and every institution in the State established and or continued in the care of insane, idiotic, and imbecile persons, and for the medical and dental care of the inmates</td>
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<td>NORTH DAKOTA</td>
<td>May 13, 1914</td>
<td>Mr. John</td>
<td>House Bill No. 516</td>
<td>Increase of each and every institution of State erected and operated in the care of insane, idiotic, and imbecile persons, and for the medical and dental care of the inmates</td>
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<td>OREGON</td>
<td>January 13, 1912</td>
<td>Mr. Cowan</td>
<td>House Bill No. 214</td>
<td>In cases of every institution so erected and operated in the State, and also, in cases of all public institutions erected or continued to be in operation</td>
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<td>OSWEGO</td>
<td>January 13, 1912</td>
<td>Senator Alb</td>
<td>Senate Bill No. 96</td>
<td>In cases of every institution so erected and operated in the State, and also, in cases of all public institutions erected or continued to be in operation</td>
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<td>PENNSYLVANIA</td>
<td>February 10, 1912</td>
<td>Mr. Freasen</td>
<td>House Bill No. 586</td>
<td>Increase of each and every institution in State having care of idiotic and imbecile persons, and for the medical and dental care of the inmates</td>
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<td></td>
<td>February 10, 1912</td>
<td>Mr. Steckel</td>
<td>House Bill No. 586</td>
<td>Increase of each and every institution in State having care of idiotic and imbecile persons, and for the medical and dental care of the inmates</td>
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<td>RHODE ISLAND</td>
<td>May 10, 1913</td>
<td>Mr. R.</td>
<td>House Bill No. 89</td>
<td>Increase of each and every institution in the State established and or continued in the care of insane, idiotic, and imbecile persons, and for the medical and dental care of the inmates</td>
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<td>WISCONSIN</td>
<td>May 10, 1913</td>
<td>Mr. Shles (by request)</td>
<td>Senate Bill No. 764</td>
<td>Increase of each and every institution so erected and operated in the care of insane, idiotic, and imbecile persons, and for the medical and dental care of the inmates</td>
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<td>March 11, 1911</td>
<td>Mr. Shles (by request)</td>
<td>House Bill No. 902</td>
<td>Increase of each and every institution so erected and operated in the care of insane, idiotic, and imbecile persons, and for the medical and dental care of the inmates</td>
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**Additional Information**: Each state's legislation includes details about the increase of institutions, the types of construction, and the specific medical and dental care provided for the patients. The legislation also outlines the responsibilities of the institutions and the state-appointed boards for the care of patients. The appropriations and the type of operation authorized for each bill vary, with some focusing on mental and physical conditions of patients, and others on the medical and dental care specifically. The bills aim to improve the sanitary conditions and the maintenance of the institutions.
The American people must determine this principle: Is eugenic sterilization a police measure, which would consequently permit the execution of a sterilization statute by a non-judicial commission, or is it an encroachment upon personal liberty to such a degree as would necessitate in each involuntary case an impartial hearing before a judicial body and the resting of the burden of the proof of social and racial menace with the state? If the former position prevails, then most of the existing statutes will probably be found constitutional; if the latter, then all except the Kansas and possibly the New Jersey, New York and Michigan statutes would probably be found unconstitutional. A constitutional statute based upon eugenic motives can certainly be drawn up in consonance with either view. It remains mainly to hasten the establishment by the courts either of the principle of the *adequacy of police regulation*, or of the *necessity of due process of law* as the basic principle for legalized eugenic sterilization.

Decisions on the constitutionality of a statute which is midway between these two positions, such as the law of New Jersey; on a purely police regulation statute, such as that of Wisconsin, and on the Kansas statute, which demands due process of law—all of them eugenic rather than punitive statutes—are therefore needed in order to define the legal status of legalized sterilization according to existing formulae. Of the twelve statutes authorizing sterilization for one or another purpose of social betterment, only one, namely, the punitive statute of Washington, has thus far (December 1, 1913) been tested in the highest court of the state.

A final decision is about to be had on the New Jersey law; and it is understood that the Wisconsin authorities will hasten a test case in that state.

Secondary in social, and probably in legal import, as well, is the questions of “class legislation” in limiting the application of the sterilization laws to the inmates of institutions. A final decision on any of the existing statutes would determine this question. It is not believed by the committee that in the final determination these laws will be found contrary to that provision of the Fourteenth Amendment to the Federal Constitution which compels the states to
extend to all of its citizens "the equal protection of the laws," notwithstanding such a determination of the Supreme Court of New Jersey.

1. WASHINGTON.

a. Decision of Supreme Court.

On September 3, 1912, the Supreme Court of the State of Washington rendered a decision sustaining the statute. The Attorney-General, Hon. W. V. Tanner, has supplied the committee with a report *(No. 70 Wash. 65; 126 Pacific Reporter, 75) of the decision, which is as follows:

THE STATE OF WASHINGTON, Respondent, v. PETER FEILEN, Appellant.

Rape—Evidence—Sufficiency.
Same—Evidence—Corroboration.

Appeal from a judgment of the Superior Court for King County, John F. Main, Judge, entered September 30, 1911, upon a trial and conviction of rape. Affirmed.

Sidney J. Williams and William R. Bell for appellant.

John F. Murphy, Hugh M. Caldwell and H. B. Butler for the respondent.

The defendant was convicted of the crime of statutory rape, committed upon the person of a female child under the age of ten years, and was sentenced to imprisonment for life in the state penitentiary. The final judgment and sentence from which he has appealed further ordered, adjudged and decreed that:

An operation to be performed upon said Peter Feilen for the prevention of procreation, and the warden of the penitentiary of the state of Washington is hereby directed to have this order carried into effect at the said penitentiary by some qualified and capable surgeon by the operation known as vasectomy, said operation to be carefully and scientifically performed.

By his first assignment appellant contends that the trial judge erred in submitting the case to the jury, for the reasons (1) that no degree of penetration was shown, and (2) that the testimony of his victim, the prosecuting witness, was not corroborated by other evidence as tended to convict him of the crime charged. We find no merit in these contentions. The evidence will not be discussed or stated in this opinion, as no good purpose could be thereby served. We are convinced that, under the rule announced in State v. Kincaid, 27 Wash. Dec. 114, 124 Pac. 684, the evidence was sufficient to comply with the requirements of Rem. & Bal. Code, sec. 2437. We are also satisfied that the evidence afforded that degree and character of corroboration required by sec. 2155, Rem. & Bal., and from all of the evidence we conclude that the only verdict that should have been returned was the one that the jury did return. The case was for the jury, and their verdict will not be disturbed.

*This case was reported also in “The Journal of the American Institute of Criminal Law and Criminology,” Vol. III, No. 5, Jan., 1913; in the September, 1913, issue of the same journal there appeared by Chas. A. Boston, Esq., of New York an arraignment of the existing laws on the ground of their infringement upon personal liberty without due process of law.
Appellant was prosecuted under Rem. & Bal. Code, sec. 2436, and the penalty of life imprisonment was properly imposed. Rem. & Bal. Code, sec. 2287, provides that:

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, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person for the prevention of procreation.

It was under the authority of this section that the trial judge ordered the operation of vasectomy, and appellant, by his remaining assignments, contends that it is unconstitutional in that an operation for the prevention of procreation is a cruel punishment prohibited by art. 1, sec. 14, of the state constitution, which directs that "excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted." As the statute does not prescribe any particular operation for the prevention of procreation, the trial judge ordered that the operation known as vasectomy be carefully and skillfully performed. The question then presented for our consideration is whether the operation of vasectomy, carefully and skillfully performed, must be judicially declared a cruel punishment forbidden by the constitution. No showing has been made to the effect that it will, in fact, subject appellant to any marked degree of physical torture, suffering or pain. That question was doubtless considered and passed upon by the legislature when it enacted the statute. Appellant further contends that the imposition of the alleged cruel punishment as a part of the sentence necessitates a reversal of the judgment. This would not be true, even though we were to hold the operation to be an infliction of cruel punishment, as the judgment of conviction would have to be affirmed, with directions to enforce the penalty of life imprisonment. When a sentence is legal in one part and illegal in another, it is not open to controversy that the illegal, if separable, may be disregarded and the legal enforced. United States v. Pridgeon, 153 U. S. 48; State v. Williams, 77 Mo. 310, 313.

The crime of which the appellant has been convicted is brutal, heinous and revolting, and one for which, if the legislature so determined, the death penalty might be inflicted without infringement of any constitutional inhibition. It is a crime for which, in some jurisdictions, the death penalty has been imposed. 33 Cyc. 1518. If for such a crime death would not be held a cruel punishment, then certainly any penalty less than death, devoid of physical torture, might also be inflicted. In the matter of penalties for criminal offenses the rule is that the discretion will not be disturbed by the courts except in extreme cases. It would be an interference with matters left by the constitution to the legislative department of the government for us to undertake to weigh the propriety of this or that penalty fixed by the legislature for specific offenses. So long as they do not provide cruel and unusual punishments, such as disgraced the civilization of former ages, and make one shudder with horror to read them, as drawing, quartering, burning, etc., the constitution does not put any limit upon legislative discretion. Whitten v. State, 47 Ga. 297.

On the theory that modern scientific investigation shows that idiocy, insanity, imbecility and criminality are congenital and hereditary, the legislatures of California, Connecticut, Indiana, Iowa, New Jersey, and perhaps other states, in the exercise of the police power, have enacted laws providing for the sterilization of idiots, insane, imbeciles and habitual criminals. In the enforcement of these statutes vasectomy seems to be a common operation. Dr. Clark Bell, in an article on hereditary criminality and the asexualization of criminals, found at page 134, Vol. 27, Medico-Legal Journal, quotes with approval the following language from an article contributed to Pearson's Magazine for November, 1909, by Warren W. Foster, senior judge of the Court of General Sessions of the Peace of the County of New York:
Vasectomy is known to the medical profession as "an office operation" painlessly performed in a few minutes, under an anesthetic (cocaine) through a skin cut an inch long, and entailing no wound infection, no confinement to bed. "It is less serious than the extraction of a tooth," to quote from Dr. William D. Belfield of Chicago, one of the pioneers in the movement for the sterilization of criminals by vasectomy, an opinion that finds ample corroboration among practitioners. . . . There appears to be a wonderful unanimity of favoring the prevention of their future propagation. The Journal of the American Medical Association recommends it, as does the Chicago Physician Club, the Southern District Medical Society, and the Chicago Society of Social Hygiene. The Chicago Evening Post, speaking of the Indiana law, says that it is one of the most important reforms before the people; that "rarely has big thing come with so little fanfare of trumpets." The Chicago Tribune says that "the sterilization of defectives and habitual criminals is a measure of social economy. The sterilization of convicts by vasectomy was actually performed for the first time in this country, so far as is known, in October, 1899, by Dr. H. C. Sharp of Indianapolis, then physician to the Indiana State Reformatory at Jeffersonville, though the value of the operation for healing purposes had long been known. He continued to perform the operation with the consent of the convict (not by legislative authority) for some years. Influential physicians heard of his work, and were so favorably impressed with it that they endorsed the movement which resulted in the passage of the law upon the Indiana statute books. Dr. Sharp has this to say of this method of relief to society: "Vasectomy consists of ligating and resecting a small portion of the vas deferens. This operation is indeed very simple and easy to perform; I do it without administering an anaesthetic, either general or local. It requires about three minutes' time to perform the operation, and the subject returns to his work immediately, suffers no inconvenience, and is in no way impaired for his pursuit of life, liberty and happiness, but is effectively sterilized."

Must the operation of vasectomy, thus approved by eminent scientific and legal writers, be necessarily a cruel punishment under our constitutional restriction when applied to one guilty of the crime of which appellant has been convicted? Cruel punishments, in contemplation of such constitutional restriction, have been repeatedly discussed and defined, although we have 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, 116 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 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 crimes 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 us 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 heartrendering.

The learned jurist then proceeds with the narration of the cruel punishments mentioned in 4 Blaskstone, 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; Wyatt's Case, 6 Rand 694; In re Kemmler, 136 U. S. 436, 446; Wilkerson v. Utah, 99 U. S. 130, 135; 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 inflictions.

In re O'Shea, 11 Cal. App. 366, 105 Pac. 777, the California Court of Appeals for the first district said:

Cruel and unusual punishments and 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, 165 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 or 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.

The judgment is affirmed.

PARKER, CHADWICK, and GOSE, J. J., concur.


In commenting upon this decision editorially, the New York Times for October 12, 1912, says:

"CRUEL AND UNUSUAL."

The law for the sterilization of criminals in the State of Washington has been adjudged by its Supreme Court as not inflicting a "cruel" punishment forbidden by the constitution. The Federal Constitution and the constitutions of most of the states prohibit punishments that are both "cruel and unusual." The New York statute passed at the last session subjects "feeble-minded, epileptic, criminal and other defective inmates confined in the several state hospitals for the insane, state prisons, reformatories and charitable and penal institutions," who are also of confirmed criminal tendencies, to a pain-
less operation that cuts them off from posterity. Their diseased and criminal
traits will die with them. It is designed, however, as a measure of punish-
ment. In a sense, it is unusual. Is it likewise excessively severe?

The New York Law Journal, discussing the Washington case in its issue
of October 8th, refers to decisions stating that the constitutional prohibition
was aimed at punishments of shocking brutality such as burning at the
stake, breaking on the wheel, drawing and quartering, and so on, which “dis-
graced the civilization of former ages.” The Law Journal quotes also the
recent decision of the Federal Supreme Court in *Weems v. United States*,
which says:

The eighth amendment is progressive and does not prohibit merely the
cruel and unusual punishments known in 1689 and 1787, but may acquire
wider meaning as public opinion becomes enlightened by humane justice.

But the decision regards the eighth amendment as primarily “a precept of
justice that punishment of crime should be graduated and proportioned to the
offense.” In the Weems case a penalty imposed under a Philippine statute was
declared cruel and unusual, not because it was unique, but because very severe.
Conversely, the Law Journal thinks, the clause in state constitutions may be
interpreted as not fixed, but progressive, “so as to sanction forms of punish-
ment, not wantonly or extremely cruel, and shown to be appropriate to an
offense by new conditions developed under social progress.”

The Washington statute is purely punitive, and while the deci-
sions of the Washington courts are very pertinent to the whole ques-
tion of constitutionality, a law based primarily and directly upon
eugenical motives, and in which sterilization is considered either (a)
clearly as a police measure or (b) as necessitating in each case “due
process of law” has not yet been tested in the courts.

2. NEW JERSEY.

The New Jersey Act is not a punitive one; but it considers
eugenical sterilization in part as subject to police regulation and in
part as of sufficient importance to require in certain contingencies
certain legal procedure—although perhaps not “due process of law.”
This statute was on November 18, 1913, held by the Supreme Court
of New Jersey to be contrary to the Constitution of the United
States, but the highest court of the state of New Jersey is the Court
of Errors and Appeals, to which an appeal will be made, and since
the question involves the Federal Constitution, a further appeal may
(and we trust will) be made to the Supreme Court of the United
States. The history of the New Jersey litigation is as follows:

a. *Brief by Assistant Attorney-General.*

The executive commission provided a test case in their selection
for sterilization of one Alice Smith, a ward of the State and an in-
mate of the New Jersey State Village for Epileptics at Skillman. For
this case the papers were filed with the County Clerk on November 12, 1912. The writ of certiorari was served on the Attorney-General December 26, 1912. Hon. Nelson B. Gaskill, Assistant Attorney-General, on behalf of the defendants submitted to the Supreme Court of New Jersey a brief, from which we quote in part:

THE FACTS EXHIBITED BY THE STATE OF THE CASE.

The prosecutor, Alice Smith, is an inmate of the New Jersey State Village for Epileptics, above the age of twenty-one years, and was committed to the said institution by an order made by the judge of the Court of Common Pleas of the County of Essex on August 19, 1902, as an indigent epileptic. (State of the Case, Pages 5, 6, 7, 8 and 9.)

In addition to the stipulation of facts, and the appearance of the record formally adjudging the prosecutor to be an epileptic, the certificate of original records, the history and condition of the prosecutor, are exhibited in pages of the State of the Case, 9 to 45. It is impossible to consider this evidence without being led inevitably to the result that the prosecutor is, in fact, an epileptic. In fact, this is not denied.

The hearing and the order of the board following the hearing (page 44) indicate that the statutory procedure was properly followed.

The act in question was passed by the legislature of nineteen hundred and eleven, and became a law, with the approval of the Executive. The legislative policy follows established belief upon the subject treated, as is evidenced by the laws of other states.

Indiana, Laws 1907, C-215;
Connecticut, Public Acts 1909, C-209;
California Statutes 1900, C-720;
Iowa, Laws 1911, C-129.

The underlying principle upon which such legislation is based, and its justification, must be found in the police power of the states. It is to be observed that nothing in the act now under consideration indicates that its operation is conceived or intended to be within the part of the police power of the state which deals with crime by administering punishment. The act belongs rather to the administrative, regulative phase of the police power, intended to promote the general welfare, not only of the presently existing group of citizens, but their successors throughout the continuation of the state as such. The tests to be applied to this statute, therefore, are not those by which a punitive statute is measured.

Since the limits of the police power have never been encompassed within a single definition, but must be judged inevitably by the circumstances of each individual case as presented, so this case stands without absolute precedent.

So far as information runs in the several states in which similar legislation has been passed, either the operation of the act has received some assent from the individuals affected, or has been put into operation without objection or subsequent determination by the court in a test case. For there is no decision which counsel has been able to find dealing directly with the questions now presented.

The statute of the State of Washington, which was under review in State v. Feilen, 126 Pac. Rep. 75, is a statute somewhat similar, but in which the operations of the statute were clearly and specially directed at punishment for crime, and, as has been stated above, no such purpose can be found in the statute now under review. The question, therefore, of double punishment, or cruel or unusual punishment, is not involved.
The Legislature has declared the scope of the statute as applied to certain
described classes. It seems to be settled that the declaration of the Legisla-
ture prohibiting certain acts of restraint of previously existing liberties, as
harmful to the public welfare, disposes of the subject-matter, so far as the
Court is concerned, with the problem of whether the acts referred to are or
are not harmful, and, therefore, to be prohibited. This is the burden of the
decision in the case of the State Board of Health v. Diamond Mills Paper
Company, reported in 63 Eq. at p. 11. The only question, therefore, before
the Court can be, not whether the Legislature is justified in the conclusion
which it has reached, but whether, having reached that conclusion, it has, in
enforcing it, or in the declaration of the statute, encroached upon any of the
rights or privileges of the individual guaranteed by the organic law beyond
the power of legislative invasion.

It must be conceded that the growing tendency of judicial decision is
toward a liberal interpretation of the guarantees of personal rights, as con-
tained in the State and Federal Constitutions, subjecting the rights of the
individual to restriction in favor of the general welfare.

As Mr. Justice Holmes said, in rendering the opinion in Noble State Bank
v. Haskell, 219 U. S., p. 104:

Many laws which it would be vain to ask the court to overthrow could be
shown, easily enough, to transgress a scholastic interpretation of one or
another of the great guarantees in the Bill of Rights. They more or less limit
the liberty of the individual or they diminish property to a certain extent. We
have few scientifically certain criteria of legislation, and as it often is difficult
to mark the line where what is called the police power of the states is lim-
ited by the Constitution of the United States, judges should be slow to read
into the latter a nolumus mutare as against the lawmaking power.

The novelty of the statutory proceeding, and the broad scope of the statu-
tory forecast, must, therefore, be dismissed, and search made, since there is
no absolute precedent for decisions which will, at least, act as lines of di-
rection.

It is well settled that the right of marriage is subject to limitations by the
state. It is true that the state has never regarded the marriage ceremony as
legal, as distinguished from a religious, ceremony, as is the case under the
civil law, but the regulation and restriction of the right of marriage has long
since been established. These restrictions include protection to the state
against the marriage of classes of persons distinctly upon the ground that the
birth of undesirable citizens will be detrimental to the state's welfare.

Lonas v. State, 3 Heisk. (Tenn. 287);
State v. Gibson, 36 Ind. 389;

The statutes of this state regulating marriage, including prohibition
against the marriage of epileptics, have not received consideration at the
hands of the Court, seeming to have been accepted without protest. It is
true that this limitation upon the right of marriage does not include, or has
not yet included, infliction of physical injury upon individuals for the protec-
tion of society. Yet there are not wanting decisions which indicate the right
of the state to compel physical injury upon unwilling individuals for the gen-
eral protection.

The discovery of vaccination, and its successful use, led to the adoption
of compulsory vaccination laws. These were resisted, as infringing the
rights of personal liberty, due process of law, etc., and were sustained as:
valid exercise of the police power.

Morris v. Columbus, 102 Ga. 792; 30 S. E. Rep. 850;

It results, therefore, since the state may protect itself against the birth
of undesirable citizens by placing restrictions upon the right of marriage, and
may inflict physical injury on individuals for the protection of society, that these two rights may properly be joined to accomplish the end which the Legislature has declared to be necessary and proper.

The severity of the operations required by this statute, and their possible effect, are dealt with elsewhere in the brief submitted.

So, too, the right of the state to segregate certain classes of individuals, not as criminals, but in defense of the right of the state to care for the helpless, and to protect society, has been established.

In re Dowdle, 169 Mass. 387-389;
Chavannes v. Priestly, 80 Iowa 316-320;

Thus it appears that the right of restraint may be joined to the infliction of physical injury for the protection of society.

It may be well to consider here the force and effect to be given to paragraph six of the act under review, which is as follows:

6. If any provisions of this act shall be questioned in any court, and the provisions of this act with reference to any class of persons enumerated therein shall be held to be unconstitutional and void, such determination shall not be deemed to invalidate the entire act, but only such provisions thereof with reference to the class in question as are specially under review and particularly passed upon by the decision of the court.

This clearly indicates that the Legislature, in dealing with this subject, is not unaware of the difficulty which might lie in the path of accomplishment of its purpose, and called upon the Court thereby to consider the act as applicable in the legislative mind, not only to all of the classes involved, but to any of them to which the provisions of the statute might be held to be institutionally applicable.

It appears that the act includes the feeble-minded, epileptic and other defective inmates confined in the several reformatory, charitable and penal institutions in the counties and the state, and the criminals defined by paragraph two. The application of the act, therefore, is to certain classes generally referred to as defectives, and to others generally classified as criminals. There may be, possibly, more ground for objection to the reason for the application of the provisions of the act to criminal classes than to defective classes because of the difficulty of properly determining the propriety of the procedure of the act in criminal cases. To this it may be suggested that the legislature has disposed, by its declaration, of the question of propriety when it has included certain criminals within its declaration of those to whom the act shall, in the protection of the public welfare, be applied, so that this question as to whether the the act to include any criminal classes is not within the jurisdiction of the Court, unless the criminal classes so included may be shown to have some additional guarantee beyond that of the other classes involved, which is, of course, impossible.

Or it may be suggested that this phase of the act is not brought before the Court by the present proceedings, which deal with one of the so-called defective classes, and that, therefore, the possible application of the art to the criminal classes is one which the Court is not called upon to decide, and, further, it appears that if the Court should be of the opinion that, as applied to criminal classes, the act is unconstitutional, this provision may be excised, under the legislative sanction, and the remainder of the act stand intact.

If, however, the Court shall be of the opinion that the provisions of paragraph two indicate an intention on the part of the Legislature to make this act applicable to the criminal classes therein defined, as a punishment for crime, rather than to designate the classes of individuals to whom the act is to be applicable, then it may be suggested that this phase of the act falls within the authority of State v. Feilen, above referred to.

The act of the state of Washington, there under review, dealt with habitual criminals.
The reasons filed are somewhat indefinite, but they do not indicate any objection to the form of the statute. In so far as the five distinct reasons have not been dealt with in the general argument preceding, it seems to be sufficient to say that reason number two is answered by paragraph three of the statute, provided it be sustained, and the proceedings seem to be, in all respects, in conformance with the statute, and reason number five failing to disclose wherein the proceedings are alleged to be defective, no specific answer can be made thereto.

This brief was accompanied and supplemented by a carefully prepared brief by the Honorable Elmore T. Elver, of the Wisconsin bar. The limitations of space prevent our reproducing this able paper here.

b. Decision of Supreme Court.

On November 18, 1913, the Supreme Court of New Jersey held the sterilization statute of that state to be unconstitutional in so far as it relates to epileptics. Section 6 of the statute provides that in case of determining the act unconstitutional in reference to one class of persons enumerated therein “such determination shall not be deemed to invalidate the entire act.”

The committee is indebted to Hon. Joseph P. Byers, Commissioner of Charities and Corrections of New Jersey, for the report of this decision, which follows:

NEW JERSEY SUPREME COURT. JUNE TERM, 1913.
Alice Smith, Prosecutrix, vs. Board of Examiners of Feeble-Minded (Including Idiots, Imbeciles and Morons), Epileptics, Criminals and other Defectives, Defendant.

Submitted July 3, 1913. Decided November 18, 1913.

1. The artificial regulation of the welfare of society by means of surgical operations for the prevention of procreation, being based upon the suppression of the personal liberty of individuals, must be accomplished, if at all, by a statute that does not deny to the persons thus injuriously affected the equal protection of the laws guaranteed by the fourteenth amendment to the Constitution of the United States.

2. The Board of Examiners created by “An act to authorize and provide for the sterilization of feeble-minded (including idiots, imbeciles and morons), epileptics, rapists, certain criminals and other defectives” (P. L., 1911, p. 353), ordered that the operation of salpingectomy be performed upon one Alice Smith, an epileptic inmate of a State charitable institution, as the most effective operation for the prevention of procreation.

Held, that the statute in question was based upon a classification that bore no reasonable relation to the object of such police regulation, and hence denied to the individuals of the class so selected the equal protection of the laws guaranteed by the fourteenth amendment to the Constitution of the United States.
LEGAL, LEGISLATIVE AND ADMINISTRATIVE ASPECTS OF STERILIZATION. 55

On Certiorari.
The order brought up by this writ of certiorari is as follows:

The Board of Examiners of Feeble-Minded (including idiots, imbeciles and morons), epileptics, criminals and other defectives, together with David F. Weeks, the chief physician of the New Jersey State Village for Epileptics, having on the thirty-first day of May, 1912, regularly convened at the Administration Building at the New Jersey State Village for Epileptics (according to the provisions of chapter 190, page 333, of the laws of 1911, Statutes of the State of New Jersey), and at that time, in the presence of Azariah M. Beekman, counsel regularly appointed to represent Alice Smith, an inmate of said Village, committed thereto on August 19, 1902, by Alfred F. Skinner, Judge of the Court of Common Pleas of Essex County, application for the appointment of said counsel having been made to and the appointment having been made, to and previous to the holding of said hearing, by the Judge of the Court of Common Pleas of the County of Somerset, in which County the institution in which said Alice Smith is an inmate is located, having examined into the mental and physical condition of the said Alice Smith, do find and declare her to be an epileptic person within the meaning of the said act; and the said board, together with the chief physician of said institution, having unanimously found in the case of said Alice Smith that procreation by her is inadvisable, and that there is no probability that the condition of said Alice Smith, so examined, will improve to such an extent as to render procreation by said Alice Smith advisable.

It is, therefore, on this, the thirty-first day of May, nineteen hundred and twelve, Ordered, that the operation of salpingectomy, as the most effective operation for the prevention of procreation, be performed upon the said Alice Smith in accordance with the motion at said hearing unanimously adopted.

The pertinent parts of the statute under which this order was made are as follows.
(For the full text of this statute see chapter II of this study.)

Before Justices Garrison, Trenchard, and Minturn.
For the prosecutrix, Azariah M. Beekman.
For the defendant, Nelson B. Gaskill, Assistant Attorney-General.

The following opinion of the Court was delivered by Justice Garrison:

The question propounded is whether or not the statute under which the order now before us was made is a valid exercise of the police power. The statute, it will be observed, applies also to criminals, in which aspect it does not now concern us since the prosecutrix is an epileptic, an unfortunate person, but not a criminal.

The order is made by the Board of Examiners, provided by the act of April 21, 1911, (P. L., p. 253). Briefly stated, the order after reciting that Alice Smith is an epileptic inmate of a state charitable institution, that procreation by her is inadvisable, and that there is no probability that her condition will improve to such an extent as to render procreation by her advisable, orders that the operation of salpingectomy be performed upon the said Alice Smith.

Salpingectomy is the incision or excision of the Fallopian tube, i. e., either cutting it off or cutting it out. The Fallopian tube is an essential part of the female reproductive system and consists of a narrow conduit some four inches in length that extends on each side of a woman’s body from the base.
of the womb to the ovary upon that side. These three organs, i.e., the ovary, the Fallopian tube and the uterus, are all concerned in normal child-bearing, the relation between them being that the unfecundated ovum, which is periodically produced in the ovary, passes down through the Fallopian tube into the body of the uterus, where, if fecundation by the male seed takes place, or has taken place, the embryo is formed and developed into the foetus or unborn child.

The statute is broad enough to authorize an operation for the removal of any one of these three organs essential to procreation. These organs are in pairs on either side of the body, excepting the uterus, which is a single organ lying deep in the pelvis back of the bladder. The operation of salpingectomy, therefore, to be effective must be performed on both sides of the body, and hence is in effect two operations, both requiring deep-seated surgery under profound and prolonged anaesthesia, and hence involving all of the dangers to life incident thereto, whether arising from the anaesthetic, from surgical shock or from the inflammation or infection incident to surgical interference with the peritoneal cavity. Those ordinary incidents and dangers of such an operation are not lessened where the operation is not sought by the patient but must be performed upon her by force, at least to the extent of the production of such anaesthesia as shall completely destroy all liberty of will or action. The order is addressed to no one and is silent as to the person by whom this operation is to be performed, and the statute likewise is silent upon this subject, excepting that when an order is made, "thereupon it shall be and may be lawful for any surgeon qualified under the laws of this state, under the direction of the chief physician of said institution, to perform such operation."

The prosecutrix falls within the classification of the statute in that she is an inmate of the State Village for Epileptics, a state charitable institution, "the objects of which," as stated in the act creating it, are "to secure the humane, curative, scientific and economical care and treatment of epilepsy." (4 Comp. Stat., p. 4961.)

The prosecutrix has been an inmate of this charity since 1902, and for the five years last past she has had no attack of the disease; from this statement of the facts it is clear that the order with which we have to deal threatens possibly the life, and certainly the liberty, of the prosecutrix in a manner forbidden by both the state and Federal Constitution, unless such order is a valid exercise of the police power. The question thus presented is therefore not one of those constitutional questions that are primarily addressed to the legislature, but purely a legal question as to the due exercise of the police power, which is always a matter for determination by the courts.

This power, stated as broadly as the argument in support of the order requires, is the exercise by the legislature of a state of its inherent sovereign to enact and enforce whatever regulations are in its judgment demanded for the welfare of society at large in order to secure or to guard its order, safety, health or morals. The general limitation of such power to which the prosecutrix must appeal is that under our system of government the artificial enactment of the public welfare by the forceable suppression of the constitution rights of the individual is inadmissible.

Somewhere between these two fundamental propositions the exercise of the police power in the present case must fall and its assignment to the former rather than to the latter involves consequences of the greatest magnitude. For while the case in hand raises the very important and novel question whether it is one of the attributes of government to essay the theoretical improvement of society by destroying the function of procreation in certain of its members who are not malefactors against the laws, it is evident that the decision of that question carries with it certain logical consequences having far-reaching results. For the feeble-minded and epileptics are not the only persons in the community whose elimination as undesirable citizens would, or
might in the judgment of the legislature be a distinct benefit to society. If
the enforced sterility of this class be a legitimate exercise of governmental
power, a wide field of legislative activity and duty is thrown open to which it
would be difficult to assign a legal limit.

If in the present case we decide that such a power exists in the case of
epileptics, the doctrine we shall have enunciated cannot stop there. For
epilepsy is not the only disease by which the welfare of society at large is
injuriously affected; indeed, not being communicable by contagion or other-
wise, it lacks some of the gravest dangers that attend upon such diseases as
pulmonary consumption or communicable syphilis. So that it would seem to
be a logical necessity that, if the legislature may under the police power theo-
retically benefit the next generation by the sterilization of the epileptics of
this, it both may and should pursue the like course with respect to the other
diseases mentioned with the additional gain to society thereby arising from
the protection of the present generation from contagion or contamination.
Even when these and many other diseases that might be named have been in-
cluded, the limits of logical necessity have by no means been reached.

There are other things besides physical or mental diseases that may render
persons undesirable citizens or might do so in the opinion of a majority of a
prevailing legislature. Racial differences, for instance, might afford a basis
for such an opinion in communities where that question is unfortunately a
permanent and paramount issue. Even beyond all such considerations it might
be logically consistent to bring the philosophic theory of Malthus to bear upon
the police power to the end that the tendency of population to outgrow its
means of subsistence should be counteracted by surgical interference of the
sort we are now considering.

Evidently the large and underlying question is how far is government con-
stitutionally justified in the theoretical betterment of society by means of the
surgical sterilization of certain of its unoffending but undesirable members. If
some, but by no means all, of these illustrations are fanciful, they still serve
their purpose of indicating why we place the decision of the present case upon
a ground that has no such logical results or untoward consequences.

Such a ground is presented by the classification upon which the present
statute is based, which is of such a nature that the persons included within it
are not afforded the equal protection of the laws under the Fourteenth Amend-
ment of the Constitution of the United States, which provides that “no state
shall deny to any person within its jurisdiction the equal protection of the
laws.” Under this provision it has been uniformly held that a state statute
that bears upon a class of persons selected by it must not only bear alike upon
all the individuals of such class, but that the class as a whole must bear some
reasonable relation to the legislation thus solely affecting the individuals that
compose it.

“It is apparent,” said Mr. Justice Brewer in Gulf, Colorado & R. R. Co. v.
Ellis (166 U. S., p. 150), after a review of many cases, “that the mere fact
of classification is not sufficient to relieve a statute from the reach of the
equality clause of the Fourteenth Amendment, and that in all cases it must
appear, not only that a classification has been made, but also that it is one
based upon some reasonable ground, some difference which bears a just and
proper relation to the attempted classification and is not a mere arbitrary
selection.”

This summarizes a mass of cases that might be cited.

Turning our attention now to the classification on which the present
statute is based and laying aside criminals and persons confined in penal in-
stitutions with which we have no present concern, it will be seen that as to
epileptics, with which alone we have to do, the force of the statute falls wholly
upon such epileptics as are “inmates—confined in the several charitable insti-
tutions in the counties and state.” It must be apparent that the class thus
selected is singularly narrow when the broad purpose of the statute and the
avowed object sought to be accomplished by it are considered. The objection, however, is not that the class is small as compared with the magnitude of the purpose in view, which is nothing less than the artificial improvement of society at large, but that it is singularly inept for the accomplishment of that purpose in this respect, namely, that if such object requires the sterilization of the class so selected, then a fortiori does it require sterilization of the vastly greater class who are not protected from procreation by their confinement in state or county institutions.

The broad class to which the legislative remedy is normally applicable is that of epileptics, i.e., all epileptics. Now, epilepsy, if not, as some authorities contend, mainly a disease of the well-to-do and overfed, is, at least, one that affects all ranks of society, the rich as well as the poor. If it be conceded, for the sake of argument, that the legislature may select one of these broadly defined classes, i.e., the poor, and may legislate solely with reference to this class, it is evident that by the further subclassification of the poor into those who are and those who are not inmates in public charitable institutions a principle of selection is adopted that bears no reasonable relation to the proposed scheme for the artificial betterment of society. For not only will society at large be just as injuriously affected by the procreation of epileptics who are not confined in such institutions as it will be by the procreation of those who are so confined, but the former vastly outnumber the latter, and are in the nature of things vastly more exposed to the temptation and opportunity of procreation, which, indeed, in the cases of those confined in a presumably well-conducted public institution is reduced practically to nil.

The particular vice, therefore, of the present classification is not so much that it creates a subclassification based upon no reasonable basis, as that having thereby arbitrarily created two classes it applies the statutory remedy to that one of those classes to which it has the least, and in no event a sole, application, and to which, indeed, upon the presumption of the proper management of our public institutions it has no application at all. When we consider that such statutory scheme necessarily involves a suppression of personal liberty and a possible menace to the life of the individual who must submit to it, it is not asking too much that an artificial regulation of society that involves these constitutional rights of some of its members shall be accomplished, if at all, by a statute that does not deny to the persons injuriously affected the equal procreation of the laws guaranteed by the Federal Constitution.

The suggestion that the classification might be sufficient if the scheme of the statute were to turn the sterilized inmates of such public institutes loose upon the community, and thereby to effect a saving of expense to the public, is not deserving of serious consideration. The palpable inhumanity and immorality of such a scheme forbids us to impute it to an enlightened legislature that evidently enacted the present statute for a worthy social end, upon the merits of which our present decision upon strictly legal lines is in no sense to be regarded as a reflection.

The conclusion we have reached is that, without regard to the power of the state to subject its citizens to surgical operations that shall render procreation by them impossible, the present statute is invalid in that it denies to the prosecutrix of this writ the equal protection of the laws to which, under the Constitution of the United States, she is entitled.

The order brought up by this writ is set aside.

c. Comment.

On November 24, 1913, Hon. Nelson B. Gaskill, the Assistant Attorney-General, wrote to the Committee:
The New Jersey Sterilization Act was held unconstitutional with reference to that feature alone which was presented to the court, namely, its application to the class of epileptics as included within the operation of the act. I am instructed by the Board of Examiners in charge of the enforcement of this act to take an appeal from the decision of the Supreme Court to the Court of Errors and Appeals, which, of course, will be done.

The Board of Examiners expect a final decision supporting the constitutionality of the act. While the New Jersey statute as it stands provides for inadequate and clumsy executive machinery and as other defects which the committee describes in Chapters VI. and VII., still it embodies the principle of eugenical sterilization, and a final decision on its constitutionality—regardless of whether it be supported or rejected—would therefore be a great asset to practical eugenics. If an unfavorable decision is rendered by the Court of Errors and Appeals an appeal should be made to the Supreme Court of the United States. Such an appeal could probably be made on account of the conflict which the New Jersey court contends exists between the New Jersey sterilization law and the Fourteenth Amendment to the Constitution of the United States. Among other things Section One of the Fourteenth Amendment provides that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” The Fifth Amendment to the Constitution of the United States imposes practically the same limitations upon the Federal government. An early derision by the highest court in the land on the constitutionality of the act would be of immense value to the several states in their efforts to find a just and efficient legal formula for eugenical sterilization. If the New Jersey law should be held by the United States Supreme Court to be contrary to the Fourteenth Amendment, then all sterilization laws would have to provide for “due process of law” such as the Kansas law seeks, and which the model statute proposed by the committee in Chapter VIII. of these studies so fully and explicitly provides. And if the Supreme Court should decide that “the-equal-protection-of-the-laws” rather than the “due-process-of-law” provision of this amendment is violated by these laws limiting sterilization to the inmates of institutions, then the model law should be immediately amended so as to apply to the entire
population. In the interest of conservative eugenical progress it is hoped that such extension will not be immediately necessary.

If the New Jersey statute should be held to be constitutional, then a statute limited in application to the inmates of institutions would not constitute class legislation; and in so far as due process law is concerned, a nonjudicial body, such as most of the statutes provide for, would constitute a sufficient executive which could select persons for sterilization in accordance with the state law, either with or without "due process of law" for the final order, and the matter of the extension of the law to the entire population would be one of detail. The principle of eugenical (but not of punitive) sterilization is in keeping with social justice and racial welfare, and the legal formula authorizing its use could be adjusted to meet almost any conceivable decision that the Supreme Court of the United States might render.

It may be useful to make analogy between the involuntary commitment of anti-social persons to institutions, and the selections of cacogenic persons for involuntary sterilization. Such commitments to institutions can be ordered only by due process of law, but there is no lessening of the efficiency of our institutions for such classes on that account, and it is probable that in the end we shall find that a particular case of sterilization may be ordered only as a result of due process of law—that it may not be ordered by a non-judicial inquisition—and nothing would be lost thereby, but, on the other hand, sterilization in certain contingencies could become a fixed policy and much would be gained by the additional safeguards.

It seems proper at this time to call attention to one serious scientific error made by Judge Garrison in rendering the decision in the New Jersey case. He does not distinguish clearly between innate hereditary qualities (see Chapter I, Study No. 1, of this series), and things which appear to be such but are not. He confuses the methods of hereditary transmission of epilepsy and of syphilis; his sole distinction being that the former is not "communicable by contagion," and because of this fact he minimizes the social danger of epilepsy. The facts are as follows: Since natural inheritance plays but a small part in the etiology of syphilis, this disease presents a medical problem to be conquered by medical means; in the etiology of epilepsy on the other hand, natural inheritance plays an all-important role, and the problem of its conquest is a biological one to be
solved by biological means. A child may be born with syphilis, which it acquired by contamination from its parents before it was born, yet syphilis does not imply defective germ-plasm. Strictly speaking, the child does not inherit syphilis simply because it was born with it; birth is only a change of environment. The possibilities of heredity in a biological sense are ended when the two parental gametes meet in fertilization. It is true that the germ of syphilis may be waiting for the forming embryo, but the disease is a matter of environment, not of heredity. Preventive medicine will doubtless conquer it some day. Epilepsy, on the other hand, is inherent in the ancestral line of descent i.e. in the germ-plasm (see First Studies in the Heredity of Epilepsy, Davenport and Weeks, Bulletin No. 4 Eugenics Record Office). Medical science may palliate this disease, but it cannot conquer it, because its extirpation is not a medical problem. If conquered at all it can be conquered only by cutting off the lines of descent—the germ-plasm—that carry it; and this can be done only by the same methods employed by the breeder of domestic plants and animals, namely, by denying parenthood to individuals of undesirable hereditary potentialities. This distinction should be brought to the attention of the Court of Errors and Appeals in case of an appeal.

Eugenic sterilization does not set up class distinction in a legal sense of the term, because it applies to all persons presenting a given set of conditions, namely all persons duly committed to the state’s charge as socially inadequate who are proven to be potential parents of defectives. But it does make such distinction in a biological sense, setting apart the breeding stock of anti-social individuals in very much the same manner as our present laws, which in neither principle nor practice are deemed discriminatory, set apart persons who conduct themselves in a manner inimical to social interests; the difference between the two latter processes being that the former is for the future and lasting welfare of society, while the latter is merely an immediate palliative.

3. CALIFORNIA.

In California the Attorney-General, Hon. U. S. Webb, by Hon. R. C. Van Fleet, Deputy, at the request of Dr. F. W. Hatch, General Superintendent of the California State Hospitals, rendered an
opinion in which he affirms the constitutionality of the sterilization statute of that state. The opinion is dated March 2, 1910, and in part is as follows:

I may as well state at the outset that, in my opinion, the question of the castration of rapists and confirmed criminals presents some grave constitutional aspects, and I fear that in a statute of the nature of the one before us the constitutional guarantees are not entirely preserved.

There are no recorded cases arising under a statute similar to this one, as Indiana and California are the pioneer states in this legislation. Consideration of the Indiana statute, however, came before the annual meeting, of the National Prison Association, held in Chicago in September, 1907, and very full argument was indulged therein. The Attorney-General of Indiana Mr. Bingham, doubted the soundness of the principle of emasculating a perfectly sane person, unless it is imposed as a part of a penalty; in other words that this operation should be a matter of punishment adjudged by the court. This view seemed to be concurred in by other attorneys present. It was suggested that such a punishment would be unsafe in the hands of the court and the modern jury, and should only be applied after the investigation of experts. There is no doubt of the soundness of this idea, but we are restricted in this country by our system of government, which excludes many of the acts of paternalism not having the sanction of the law. I have said, however, applies to the operation known as castration. But there is another operation, for the prevention of procreation, upon the inmates of institutions intrusted with the care of confirmed criminals, idiots, rapists and imbeciles, and to the extent that the operation is part of a necessary medical treatment the act would be undoubtedly valid. This is also the opinion of the attorneys who were present at the meeting of the National Prison Association, where this question was discussed. (See Transactions National Prison Association, 1907, pp. 177-194.)

In treating upon this subject it must be borne in mind that medical opinion is now convinced that degeneracy is a defect, and that a defect differs from a disease in that it cannot be cured. Degeneracy is the term applied when the nervous or mental construction of the individual is in a state of unstable equilibrium. Degeneracy means that certain areas of brain cells or nerve centers of the individual are more highly or imperfectly developed than the other brain cells, and this causes an unstable state of the nerve system, which may manifest itself in insanity, criminality, idiocy, sexual perversion, or inebriety. Most of the insane, epileptic, imbecile, idiotic, sexual perverts, many of the confirmed inebriates, prostitutes, tramps, and criminals, as well as habitual paupers, found in our country poor-asylums, also many of the children in our orphan homes, belong to the class known as degenerates. For this condition to go on unchecked eventually means a weakening of our nation. It is, as Herbert Spencer once said, "To be a good animal is the first requisite to success in life, and to be a nation of good animals is the first condition to national prosperity."

Idiots, imbeciles and degenerate criminals are prolific and their defects are transmissible. Each person is a unit of the nation, and the nation is strong and pure and sane, or weak and corrupt and insane, in the proportion that the mentally and physically healthy exceed the diseased. This grave danger has consumed the thought of great and good men in recent years. Much restrictive legislation has been suggested and many states have passed marriage laws for the purpose of regulating, as far as possible, the propagation of degenerates through the marriage relation. Minnesota has a law providing that no woman under the age of forty-five years, or a man of any age, except he marry a woman over forty-five years of age, either of whom is epileptic, imbecile, feeble-minded or afflicted with insanity, shall intermarry or marry
any other person within the bounds of the state. Michigan, Delaware, Connecticut, New Jersey and North Dakota have all passed laws for the purpose of preventing marriage among defectives; but, unfortunately, matrimony is not always necessary to propagation, and the tendency of these several different laws is to restrict procreation only among the more moral and intelligent class, while the most undesirable class goes on reproducing its kind, the only difference being that illegitimacy is added to degeneracy.

Castration is another means that has been suggested for the purpose of preventing the propagation of the unfit. But there is still too much conflict among experts as to the result of this drastic measure and observation of its data has not been sufficiently thorough to warrant any definite deductions. Castration sometimes causes death, and it can readily be seen that one subjected to it would in all probability become morose and downcast on account of the deformity. Besides, the organs involved have a double function, that of an internal as well as an external secretion, and the organism cannot maintain a normal condition when robbed of this internal secretion.

The same results, however, in the prevention of degeneracy can be obtained by a method of treatment less objectionable and less severe. This operation is known as vasectomy, which consists of ligating and resecting a small portion of the vas deferens. Of this operation Dr. H. C. Sharp, physician in the Indiana Reformatory, who was one of the first to apply it, as early as the year 1899, says:

This operation is, indeed, very simple and easy to perform. I do it without administering an anesthetic, either general or local. It requires about three minutes' time to perform the operation, and the subject returns to his work immediately, suffers no inconvenience, and is in no way impaired for his pursuit of life, liberty and happiness, but is effectively sterilized. I have been doing this operation for nine full years. I have two hundred and thirty-six cases that have afforded splendid opportunity for post-operative observation, and I have never seen any unfavorable symptoms. There is no atrophy to the testicles, there is no cystic degenerations, there is no disturbed mental or nervous condition following, but, on the contrary, the patient becomes of a more sunny disposition, brighter of intellect, ceases excessive masturbation, and advises his fellows to submit to the operation for their own good. And here is where this method of preventing procreation is so infinitely superior to all others proposed—that it is endorsed by the subjected persons. All other methods proposed place restrictions, and, therefore, punishment upon the subject; this method absolutely does not. There is no expense to the state, no sorrow or shame to the friends of the individual, as there is bound to be in the carrying out of the segregation idea.

There is a law providing for the sterilization of defectives in effect in Indiana, and our law follows it very closely. Under the provisions of the law women may be subjected to sterilization methods as well as men, and the operation on women is almost as simple, for it consists of simply ligating the Fallopian tube.

If, under the constitution, the state may so far interfere with the right to contract as to prohibit the marriage of epileptics, it would seem that, considering this measure solely as a preventative and health measure, it would to no greater extent violate the federal constitution or the civil-rights bill. It may also be considered as an additional protection to the marriage relation, for intercourse under the sanction of the marriage relation is the only intercourse between the sexes recognized by the law, and if the state may absolutely prohibit such intercourse between epileptics in the marriage relation, it would seem that it would have the power for the protection of society to take these absolutely preventive measures, especially as their effects upon the subject are innocuous.

Marriage is undoubtedly the supreme product of human social evolution. Every advance made in the ethics of marriage has been at the expense of a
battle with natural law and animal impulse. The integrity and moral plane of the family are the keystone of our social fabric, but the struggle to maintain monogamy has been a fierce one, and is still going on beneath the surface.

It is on these broad grounds that the courts have upheld statutes preventing the marriage of defectives. I call your attention particularly to the case of Gould vs. Gould, 78 Conn. 242 [61 Atl. 604], wherein the court says:

Was the statute a valid act of legislation? It forbade the marriage of certain classes of persons under any circumstances. One of these only it is now necessary to consider—that of epileptics. The provisions of the act of 1895 were separable with respect to the different classes of persons with whom it deals, and, so far as this action is concerned, it is enough if it can be supported as to marriages contracted after its enactment by those in the condition of the defendant: Pub. Acts, 1895, chap. 325, p. 667. The constitution of this state (preamble and article 1, section 1) guarantees to its people equality under the law in the rights to “life, liberty, and the pursuit of happiness”: State vs. Conlon, 65 Conn. 478, 489, 491; 31 L. R. A. 55; 48 Am. St. Rep. 227; 33 Atl. 519. One of these is the right to contract marriage, but it is a right that can only be exercised under such reasonable conditions as the legislature may see fit to impose. It is not possessed by those below a certain age. It is denied to those who stand within certain degrees of kinship. The mode of celebrating it is prescribed in strict and exclusive terms: Gen. Stat. 1902, sec. 4538. The universal prohibition in all civilized countries of marriage between near kindred proceeds in part from the established fact that the issue of such marriages are often, though by no means always, of an inferior type of physical or mental development. That epilepsy is a disease of a peculiarly serious and revolting character, tending to weaken mental force, and often descending from parent to child, or entailing upon the offspring of the sufferer some other grave form of nervous malady, is a matter of common knowledge, of which courts will take judicial notice: State vs. Main, 69 Conn. 123, 153; 36. L. R. A. 623; 61 Am. St. Rep. 30, 37; Atl. 80. One mode of guarding against the perpetuation of epilepsy obviously is to forbid sexual intercourse with those afflicted by it, and to preclude such opportunities for sexual intercourse as marriage furnishes. To impose such a restriction upon the right to contract marriage, if not intrinsically unreasonable, is no invasion of the equality of all men before the law, if it applies equally to all, under the same circumstances, who belong to a certain class of persons, which class can reasonably be regarded as one requiring special legislation either for their protection or for the protection from them of the community at large. It can not be pronounced by the judiciary to be intrinsically unreasonable if it should be regarded as a determination by the general assembly that a law of this kind is necessary for the preservation of public health, and if there are substantial grounds for believing that such determination is supported by the facts upon which it is apparent that it was based: Holden vs. Hardy, 169 U. S. 366, 398; 42 L ed. 780, 793; 18 Sup. Ct. Rep. 383; Bissell vs. Davidson, 65 Conn. 183, 192; 29 L. R. A. 251m; 32 Atl. 348. There can be no doubt as to the opinion of the general assembly, nor as to its resting on substantial foundations. The class of persons to whom the statute applies is not on arbitrarily formed to suit its purpose. It is certain and definite. It is a class capable of endangering the health of families and adding greatly to the sum of human suffering. Between the members of this class there is no discrimination, and the prohibitions of the statute cease to operate when, by the attainment of a certain age by one of those whom it affects, the occasion for the restriction is deemed to become less imperative. While Connecticut was the pioneer in this country with respect to legislation of this character, it no longer stands alone. Michigan, Minnesota, Kansas, and Ohio have, since 1895, acted in the same direction: 2 Howard, Matrimonial Institutions, 400, 479, 480; Ohio Sess. Laws 1904, p. 83. Laws of this kind may be regarded as an expression of the conviction of modern society that disease is largely prevent-
able by proper precautions, and that it is not unjust in certain cases to require
the observation of these, even at the cost of narrowing what in former days
was regarded as the proper domain of individual right. It follows that the
statute in question was not invalid, as respects marriages contracted by epi-
leptics, after it took effect.

If there is the power to thus guard against the perpetuation of epilepsy
and preclude such opportunities for sexual intercourse as marriage furnishes,
then, by the same course of reasoning, the state would have the power to pre-
clude any opportunity for such intercourse in the manner herein prescribed,
inasmuch as the measures provided for have no harmful results.

Considered, then, as a health measure, and as a rational and undoubted
protection to society, without any elements of torture accompanying its execu-
tion, it appears to me that the sterilization of degenerates by the method
which I have described would not violate our constitutional guarantee.

Common law must keep pace with scientific and social advances. We are
living in a quick and active age of scientific progress and achievement that
atrophies the power of surprise. The individual finds himself in the midst
of a bewildering panorama of uses and activities, and he needs a superb equip-
ment to meet them. The age must furnish him with the equipment, mental
and physical, as well as with the activities. The art of healing and preventive
medicine, in particular, has achieved great triumphs in emancipating the race
from the old terrors of virulent disease. This it has done by dealing with
the science of causes, instead of results alone. It has now turned its pene-
trating light upon race degeneracy, with its train of accompanying evils, crimi-
nality, prostitution, pauperism, inebriety, and insanity. Modern thought is
being swayed by these immortal pioneers of science, who have stood for the
liberation of humanity from ignorance, dogma, and superstition. The deal-
ing with crime from the standpoint of its causes, heredity and degeneracy, con-
genital and acquired, is a modern science. Lombroso’s great work appeared
in 1876. Already an enlightened criminology has had its results in our
modern reformatory; growing sentiment in favor of classification of crimi-
inals; the establishment of juvenile courts, and the separation of youthful and
adult criminals; the parole system, and the increasing favor with which the
indeterminate sentence is regarded. These are but rays of light which filter
down into our slough of ignorance. We can not but be profoundly convinced
that the day of fruition in the treatment of the criminal and insane is at hand.

Science has taken its masterful grasp of this subject, and the precious results
will as surely follow as the discovery of anaesthesia, or any of the boons,
which have attended the triumphant march of scientific thought, and the meas-
ures here proposed will undoubtedly become universal in the treatment of de-
fectives. Shall it be said that the supreme flower of Anglo-Saxon civilization,
the common law, does not keep pace with the beneficent ideas of the age? Is
it not adequate to the very -varying needs of our social development? Mr.
Justice Matthews says, in Hurtado vs. California, that this flexibility and
capacity for growth and adaptation is the peculiar boast and excellence of the
common law. The Constitution of the United States was ordained, it is true,
by the descendants of England, who inherited the traditions of English law
and history; but it was made for an undefined and expanding future and for
a people gathered, and to be gathered, from many nations and many tongues.

There is nothing in Magna Charta, rightly construed, as a broad charter of
right and law, which ought to exclude the best ideas of all systems and of
every age; and as it was the characteristic principle of the common law to
draw its inspiration from every foundation of justice, we are not to assume
that its sources of supply have been exhausted. On the contrary, we should
expect that the new and various experiences of our own situation and system
will mold and shape it into new and not less useful forms (Hurtado vs. Cali-
foria, 110 U. S., 530).
Whether considered as an additional punishment, or as an invasion of the right to procreate, involved in the right to life, liberty and happiness, the measures proposed are no more radical than the measures for the suppression of crime now in vogue, which do not show any particular sensitiveness on the part of society as to the criminal’s rights. The law does not hesitate to hang the murderer, despite the fact that, upon the average, the murderer is of all criminals the least dangerous to society. Liberty is the right of man, which can not be gainsaid, yet the law does not hesitate to imprison for life on occasion. Life imprisonment not only takes away liberty, but practically infringes upon the right to live, the right to marry, and the right to procreate. In imprisonment for life, or capital punishment, it would be somewhat difficult to see any conservation of the rights of the criminal’s posterity from the sentimentalist’s standpoint.

Sterilization of criminals for the protection of the public against a degenerate posterity in no way compares in severity with capital punishment or imprisonment for life, for it does not interfere with either liberty or life.

As to the difficulty of determining whether a person is a congenital criminal or not before applying the measures proposed, a noted specialist has this to say:

It is not necessary to demonstrate a criminal anthropologic type in order to prove the value of measures tending to prevent the procreation of children by criminals. Whether there is a definite anthropologic type or not, the fact remains that a certain more or less definite proportion of our population is composed of criminals by instinct and by profession—these individuals are degenerates, and the degeneracy that is responsible for their own criminality may indubitably be transmitted to their descendants. Any measure that prevents this class of individuals from having descendants is necessarily preventive of crime. To demand that all criminals should be cast in a definite mold, the finished product of which he who runs may read, is begging the question. It is not necessary to determine whether “any given convict is a member of an hereditary criminal group” in order to show that the prevention of his procreating will be preventive of crime.

It is obvious that the application of sterilization to the crime class would require some discrimination and should be made under strictly scientific supervision.

So far as the typic or habitual criminal is concerned the method should be universally applied. In other cases careful study and selection should be made, society in all cases be given the benefit of the doubt. There is this to be said in favor of sterilization, viz., if performed under strict scientific supervision, as a method of preventing crime only, and not for the purpose of punishment—it being directed against the criminal and not against the crime that he has committed—comparatively few mistakes would be likely to be made, and those mistakes by no means so serious in results as many that are made by courts of law in the correction and punishment of the innocent.

As restricted to the sterilization of the inmates of prisons and hospitals by the method of vasectomy, I am of the opinion that there are no legal inhibitions upon this enlightened piece of legislation which is an awakening note to a new era and a great advance toward that day when man’s inhumanity to man will have acquired a meaning beyond mere frothy sentiment.

As regards the castration of confirmed criminals and rapists, and those guilty of sexual crimes, I am of the opinion that there are grave constitutional questions at stake, and that such measures should not be taken until an adjudication is had in a court of law.

(Signed) U. S. WEBB, Attorney-General.
By R. C. VAN FLEET, Deputy.
4. CONNECTICUT.


In Connecticut the Attorney-General, Hon. John H. Light, at the request of the Directors of the Connecticut State Prison, rendered an opinion on the sterilization statute of that state. The opinion is dated at Hartford, December 9, 1912, and with the exception of the repetition of the statute and the introductory paragraph, is as follows:

THE ACT AUTHORIZING OPERATIONS FOR THE PREVENTION OF PROCREATION IS CONSTITUTIONAL.

This statute is clearly a police regulation, therefore its constitutionality must depend upon whether the regulations prescribed are kept within the proper bounds of the police power of the state.


It has been universally conceded that under the broad and comprehensive rule of public policy states may do anything necessary to protect the people which is not in conflict with the constitution.

It has been repeatedly held that the state may regulate, and even prohibit, marriage under certain conditions, and the legislature may authorize municipal corporations or boards of education to exclude unvaccinated children from public schools, even in the absence of smallpox.


State v. Conlen, 65 Conn. 489.

Our constitution does not impose any specific limitations on the exercise of legislative power, except some slight restrictions in one or two amendments, but our Bill of Rights constitutes the fundamental condition on which all powers of government may be exercised. It guarantees to the people equality under the law in their rights to “life, liberty, and the pursuit of happiness.”

Preamble and Article First.

State v. Conlen, 65 Conn. 489.

Among these rights may be mentioned the right to contract marriage and the right to beget children, but these rights can only be exercised under such reasonable conditions as the legislature may see fit to impose.

A few years ago our legislature passed a law forbidding man or woman, either of whom is epileptic, imbecile or feeble-minded, to intermarry, or to live together as husband and wife, when the woman is under forty-five years of age, and made it a state prison offense to violate, or attempt to violate, any provision of the act. Our Supreme Court held this statute to be constitutional.

In speaking for the Court in Gould v. Gould, 78 Conn. 244, Mr. Justice Baldwin said:

The universal prohibition in all civilized countries of marriage between near kindred proceeds in part from the established fact that the issue of such marriages are often, though by no means always, of an inferior type of physical or mental development.
That epilepsy is a disease of a peculiarly serious and revolting character, tending to weaken mental force, and often descending from parent to child, or entailing upon the offspring of the sufferer some other grave form of nervous malady, is a matter of common knowledge, of which courts will take judicial notice. *State v. Main*, 69 Conn. 123, 135. One mode of guarding against the perpetuation of epilepsy obviously is to forbid sexual intercourse with those afflicted by it, and to preclude such opportunities for sexual intercourse as marriage furnished. To impose such a restriction upon the right to contract marriage, if not intrinsically unreasonable, is no invasion of the equality of all men before the law, if it applies equally to all under the same circumstances who belong to a certain class of persons, which class can reasonably be regarded as one requiring special legislation either for their protection or for the protection from them of the community at large. It cannot be pronounced by the judiciary to be intrinsically unreasonable if it should be regarded as a determination by the General Assembly that a law of this kind is necessary for the preservation of public health, and if there are substantial grounds for believing that such determination is supported by the facts upon which it is apparent that it was based. *Holden v. Hardy*, 169 U. S. 366, 398, *Bissell v. Davidson*, 65 Conn. 183, 192. There can be no doubt as to the opinion of the General Assembly, nor as to its resting on substantial foundations. The class of persons to whom the statute applies is not one arbitrarily formed to suit its purpose. It is certain and definite. It is a class capable of endangering the health of families and adding greatly to the sum of human suffering. Between the members of this class there is no discrimination, and the prohibitions of the statute cease to operate when, by the attainment of a certain age by one of those whom it affects, the occasion for the restriction is deemed to become less imperative.

While Connecticut was the pioneer in this country with respect to legislation of this character, it no longer stands alone. Michigan, Minnesota, Kansas and Ohio have, since 1895, acted in the same direction. 2 Howard on Matrimonial Institutions 400, 479, 480; Laws of Ohio, 1904, p. 83. Laws of this kind may be regarded as an expression of the conviction of modern society that disease is largely preventible by proper precautions, and that it is not unjust in certain cases to require the observation of these, even at the cost of narrowing what in former days was regarded as the proper domain of individual right.

The principles laid down by Mr. Justice Baldwin in said case apply with equal force to the statute under consideration. Society owes itself the duty of preventing procreation by persons who would produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy, or imbecility. Dugdale's history of the Jukes shows where the single ancestor "Max" was the progenitor of more than 1200 social derelicts.

In view of such history the sterilization of criminals must stand within the police power of the state upon the same footing with the sterilization of idiots, feeble-minded, and imbeciles.

Such an operation should not be considered punishment any more than the imposition of vaccination is a punishment. In one case society seeks to prevent the spread of an infectious disease, and in the other the disastrous spread of crime, insanity, feeble-mindedness, idiocy, and imbecility.

In his work entitled "Mental Defectives" Dr. Barr says:

"Let asexualization be once legalized, not as a penalty for crime, but as a remedial measure preventing crime and tending to future comfort and happiness of the defective; let the practice once become common for young children immediately upon being adjudged by competent authority properly appointed, and the public mind will accept it as an effective means of race preservation. It would come to be regarded, just as quarantine, simply as protection against ill.
Dr. H. C. Sharp of the Indiana Reformatory, in his pamphlet on "The Sterilization of Degenerates," says:

Since October, 1899 I have been performing an operation known as vasectomy, which consists of ligating and resecting a small portion of the vas deferens. This operation is, indeed, very simple and easy to perform; I do it without administering an anaesthetic, either general or local. It requires about three minutes' time to perform the operation, and the subject returns to his work immediately, suffers no inconvenience, and is in no way impaired or his pursuit of life, liberty and happiness, but is effectively sterilized. I have been doing this operation for nine full years. I have two hundred and thirty-six cases that have afforded splendid opportunity for post-operative observation, and I have never seen any unfavorable symptom. . . . And here is where this method of preventing procreation is so infinitely superior to all others proposed—that it is endorsed by the subjected persons. All the other methods proposed place restriction, and, therefore, punishment upon the subject; this method absolutely does not.

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 vs. 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 theretofore 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 peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly 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.

Modern scientific investigation has shown clearly that idiocy, insanity, imbecility, and criminality are hereditary and congenital, and, on the strength of this information, Indiana, California, Connecticut, New Jersey, Iowa, New York, Nevada, and Washington, in the exercise of the police power, have enacted laws providing for the sterilization of certain persons likely to produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility.

The State of Washington has a statute which reads as follows:

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, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person for the prevention of procreation.

One Peter Feilen was convicted before the Superior Court, King County, in the State of Washington, of the crime of statutory rape, committed upon the person of a female child under the age of ten years, and was sentenced to im-
prisonment for life in the state penitentiary, and in addition to such punish-
ment, acting under the authority given in said statute, the court further ordered
an operation to be performed upon said Peter Feilen for the prevention of
procreation, and the warden of the penitentiary of the State of Washington
was directed to have the order carried into effect by some qualified and capable
surgeon by the operation known as vasectomy.

The defendant appealed from the judgment to the Supreme Court of the
state, and contended that the law is unconstitutional, in that an operation for
the prevention of procreation is a cruel punishment, prohibited by Article I,
Section 14, of the State Constitution, which directs that "excessive bail shall
not be required, excessive fines imposed, nor cruel punishment inflicted." The
court (State v. Feilen) rendered its decision September 3, 1912, holding the
law to be constitutional, and that the operation of vasectomy is not cruel pun-
ishment. Among other things, the court said:

As the statute does not prescribe any particular operation for the preven-
tion of procreation, the trial judge ordered that the operation known as vasec-
tomy be carefully and skillfully performed. The question then presented
for our consideration is whether the operation of vasectomy, carefully and skill-
fully performed, must be judicially declared a cruel punishment forbidden by
the Constitution. No showing has been made to the effect that it will in fact
subject appellant to any marked degree of physical torture, suffering or pain.
That question was doubtless considered and passed upon by the legislature
when it enacted the statute.

The crime of which the appellant has been convicted is brutal, heinous,
and revolting, and one for which, if the legislature so determined, the death
penalty might be inflicted without infringement of any constitutional inhibition.
It is a crime for which in some jurisdictions the death penalty has been im-
posed. 33 Cyc. 1518. If for such a crime death would not be held a cruel
punishment, then certainly any penalty less than death, devoid of physical
torture, might also be inflicted. In the matter of penalties for criminal of-
fenses, the rule is that the discretion of the legislature will not be an inter-
ference with matters left by the constitution to the legislative department of
the government for us to undertake to weigh the propriety of this or that
penalty fixed by the legislature for specific offenses. So long as they do not
provide cruel and unusual punishments, such as disgraced the civilization of
former ages, and make one shudder with horror to read of them, as draw-
ing, quartering, burning, etc., the constitution does not put any limit upon legis-

In State v. Woodward, 68 V 66, 69, S. E. 385, 30 L. R. A. (N. S.) 1004,
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 punishment. So its enactments do
not deprive life, liberty, or property without due process of law, and the judg-
ment 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 than to ascertain
whether the legislature had the power to enact it." 12 Cyc. 136. "The power
of the legislature is to impose fines and penalties for a violation of its statu-
tary requirements is coeval with government." Mo. P. R. Co. v. Humes, 115 U. S.
512. (s Sup. Ct. 110, 29 L. Ed. 463). 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 (42 N. E. 504 L.
R. A. 734, 52 Am. St. Rep. 498); Southern Express Co. v. Commonwealth,
92 Va., 66 (22 S. E., 41 L. R. A., 436). For such a fundamental proposition
I need cite no further authority.
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.

The foregoing is the only case bearing upon any feature of a sterilization law, and that is confined to the constitutionality of the punishment provided.

The statutes of the states of Washington and Nevada both limit the operation to an habitual criminal, any person adjudged guilty of the carnal abuse of a female person under the age of ten years, or of rape, and contemplate the imposition of such operation as further punishment, while Indiana, California, Connecticut, New Jersey, Iowa, and New York have laws which provide for performing the operation upon all such persons confined in the state prison and other state institutions, who are likely to produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility.

The New Jersey and New York laws are expressly limited in their application to criminals as follows:

The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape or of succession of offenses against the criminal law as in the opinion of this Board of Examiners shall be deemed to be sufficient evidence of confirmed criminal tendencies.

And each statute provides for the appointment of counsel to represent the person to be examined at the hearings of the board, and in any subsequent proceedings, and permits an appeal from any order of the board to the Supreme Court, or any justice thereof, and the court may, on appeal, grant a stay, which shall be effective until such appeal shall have been decided.

The other state laws make no provision for the appointment of counsel or an appeal from any order of the board.

The laws of Connecticut, New York and Iowa prohibit the performance of the operation, except as authorized by the respective acts, unless the same shall be a medical necessity. Therefore the only persons eligible for the operation in those states are the persons confined in the institutions named.

This prohibition is based upon the police powers of the state, and the legislature doubtless justified it upon the theory that it would be dangerous to society to permit healthy men and women to cause themselves to be deprived of the natural power of procreation. I am of the opinion, however, that some board should have the authority to permit such operation to be performed upon any individual, whenever such individual is able to satisfy the board that his purpose is to prevent producing children with an inherited tendency to crime, insanity, disease, feeble-mindedness, idiocy, or imbecility. It is illogical to limit the application of the law to the inmates of prisons and asylums and to make it a penal offense to perform the operation on anyone else. The law should provide for a state board with power to examine individual applicants, as well as the inmates of state institutions, and order the operation performed in every case where the person examined would be likely to produce offspring with any of the above tendencies.

Many persons inherit a tendency to insanity or disease, who may desire to avoid transmitting such tendency to their children, and they should be permitted to obtain legal sanction for submitting to the operation of vasectomy.

Some features of our statute, in my judgment, are objectionable and should be changed, but I find nothing intrinsically unreasonable in the law. It applies equally to all of certain classes of persons, which persons may be regarded as requiring special legislation for the protection from them of the community at large. 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.

In determining the constitutionality of such a law there may be ground for some distinction between different classes of individuals embraced within its terms. No one will question that the sterilization of idiots and imbeciles may be regarded within the police power of the state, but some may doubt whether the sterilization of criminals can be supported on the same ground. I believe that the sterilization of such criminals as are included within the purview of our statute may be. The inmates of the institutions named in the act are brought by penal and police regulations into the custody and care of the state and constitute a special class. The state assumes under the law an obligation to this class and to the public which does not obtain in relation to any other class of our citizens, therefore the application of the sterilization law to this class alone is reasonable and it cannot be said to deprive such class of “equal protection of the law,” vouchsafed by the Fourteenth Amendment of the Constitution of the United States.

For the foregoing reasons I am of the opinion that the statute in question is constitutional.

Respectfully submitted,

JNO. H. LIGHT,
Attorney-General,

b. Statement by Dean Rogers.

In a letter dated January 8, 1912, to Attorney-General Light, Dean Rogers of the Yale Law School says concerning this statute:

. . . . At first blush I thought that the act was unconstitutional, but after a careful examination of the provisions of the act and numerous authorities, I came to the conclusion that the act is constitutional.

The Fourteenth Amendment of the Constitution of the United States gave me considerable pause. I considered very carefully whether the state through this law would “deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.”

I understand the essential elements of “due process of law” are notice and opportunity to defend. But due process does not require any particular form of proceedings to be observed, but only that the same shall be regular proceedings, in which notice is given of the claim asserted and opportunity afforded to defend against it.

Smith v. State Board of Medical Examiners, 117 N. W. 1116.

It appears to me that no member of the class enumerated in the statute can claim the right to produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy, or imbecility; therefore, the statute is a reasonable police regulation for the protection of the health, morals and safety of the people, and the discrimination rests upon a proper basis. Within constitutional limits the legislature is the sole judge as to what laws should be enacted for the protection and welfare of the people, and as to when and how the police power of the state is to be exercised.

State v. Drayton, 117 N. W.; N. J. Ch, 1908.
The public policy of the state is the creature of the legislature and the courts have nothing to do with forming it and only recognize it like any other matter of public law.

The “equal protection of the law” means equal security or burden under the law to all similarly situated, and the law must bear alike on all individuals, classes, and districts which are similarly situated, the real purpose of the amendment being to prevent arbitrary and capricious legislation; therefore, to constitute equal protection of the law it is only necessary that there be equality among those similarly situated.

I think the inmates of the state prison and the insane hospitals at Middletown and Norwich are essentially in a class by themselves, and the state necessarily assumes a different relationship to them than to any other classification of a part of our people.

I believe, however, that the law is defective and should be amended. In my opinion the power to examine and order an operation of vasectomy or oophorectomy should belong to the State Board of Health and the directors of the State Prison, and the Superintendents of the State Hospitals at Middletown and Norwich might be authorized to have any inmate examined with a view of having such operation performed, and in such case the inmate to be examined should be privileged to have an attorney appointed to appear for him at the expense of the state.

And, furthermore, any individual should have the right to make application to the Board to he examined, and in case sufficient reason be shown, to be authorized to have said operation performed on himself or herself.

5. OPINION ON THE GENERAL PRINCIPLE.


The following opinion is rendered by Louis Marshall, who, in a letter to Hon. Warren W. Foster, Judge of the Court of General Sessions of New York City, says:

Guggenheimer, Untermeyer & Marshall,
No. 37 Wall Street, New York.

April 12, 1912.

Dear Judge Foster:

I am in receipt of your several letters, in which you ask my opinion with respect to the constitutionality of legislation which has been proposed for the sterilization of criminals and degenerates by means of the operation of vasectomy. I regret that I have been so situated as to be unable to give the subject the careful study to which it has been entitled. It has been my intention to do so, but you apparently are desirous of an immediate expression of my views, and I will therefore state them in mere outline, without elaboration or argument.

Doubtless the state has the power, in the administration of punishment to offenders and in dealing with those who may imperil the safety of the public, to segregate them and to exercise a general supervision over them. The exercise of this function comes strictly within the police power of the state, since it affects the public safety and welfare. In the case of criminals the state has the power to impose more drastic punishment upon second offenders and upon habitual criminals than it sees fit to impose upon first offenders. It has likewise the power to impose indeterminate sentences upon those convicted of crime.

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 the 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 con-
stitute cruel and unusual punishment within the inhibition of the Constitution,
in People ex rel Kemmier v. Durston, 119 N. Y. 569, affd. 136 U. S. 436,
446. The mutilation 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 in-
human punishment.

The most recent decision on the subject is to be found in Weems v. United
States, 217 U. S. 349, where the Supreme Court held a provision of the Penal
Code of the Philippine Islands to impose cruel and inhuman punishment in
so far as it prescribed for an offense by an officer of the government who made
false entries in public records, the obligation to pay a large fine, imprisonment
during twelve years, with accessories such as the carrying of chains, the de-
privation of civil rights during imprisonment, perpetual disqualifications to
enjoy political rights, to hold office thereafter, and the subjection to constant
surveillance. In the dissenting opinion of Mr. Justice White, in which Mr.
Justice Holmes concurred, there are collated a large number of precedents,
which indicate the extent to which courts have sustained statutes imposing
drastic penalties even though they were claimed to be cruel and unusual.

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 rea-
sons, founded on considerations of the public welfare, which would justify its
imposition. 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 in-
frequent, and yet the very fact that they exist would require the exercise of
extreme caution in determining whether such a punishment is 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 opera-
tion 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 the 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 659 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 warned an opportunity to be heard by the court on the question as to whether or not such penalty shall be inflicted.

To go further than to lay down these general principles, and to attempt to formulate a statute which would fully cover the various questions which may arise in respect to the application of this remedy, is at present impossible for me. I shall continue to consider the subject, which is intensely interesting and important, and if any further ideas suggest themselves to me I shall be very glad to communicate them to you.

I fear that the public is not as yet prepared to deal with this problem; it requires education on the subject. I cannot, however, refrain from expressing the general opinion that the movement is one which is based on sound considerations. The difficulty is, however, in adopting proper safeguards to adequately protect those who are not hopelessly conformed criminals, degenerates, or defectives.

It is my recollection that I have recently seen a case decided by the Supreme Court of Indiana which has a strong bearing upon this question, but I cannot for the moment lay my hands on it. If I find it I shall send you a reference to the decision.

Very truly yours,

(Signed) LOUIS MARSHALL.

HON. WARREN W. FOSTER,
32 Franklin Street
New York City.

b. Summary.

If the purely punitive statute of the state of Washington is declared constitutional, how much more surely ought a carefully designed purely eugenic statute be found 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 applied with due respect for the rights and personal guarantees of the individuals selected for sterilization, and with such discrimination that worthy blood lines will not be cut off. It would, indeed, be folly for the people of a state to enact a sterilization law if they did not believe firmly that certain determinable human defects, causing personal misery and anti-social conduct, are hereditary and incurable in nature, and that by studying the innate traits of the kin of individuals possessing such traits, men of science would be able to determine the nature of such individuals' hereditary qualities in
reference to the specific traits studied. In reference to this aspect let it be said that heredity in many human traits is demonstrated, and the people are beginning to find out the truth concerning the human stock. Practical application of eugenical agencies is now a matter of method rather than principle.

CHAPTER VI.

WORKING OUT OF EXISTING LAWS.

With legislation as with machinery there are a good many parts, each of which must be adjusted and oiled before the machine which is designed and brought into being will operate smoothly and perform the work expected of it. Even though the motive be proper and the principle correct, an ill-designed statute, or an indifferent public, careless institution authorities, derelict state executive agencies, lack of adequate appropriation—and perhaps many other factors, acting either separately or en masse, may disable or may even destroy altogether the service expected of the entire mechanism.

The existing sterilization laws are a mixture of mandatory and optional elements, but the mandatory features have thus far not functioned any better than the optional ones. On the other hand, in some instances eugenical sterilization has been carried on without the sanction of any law at all. If a law is considered as experimental, and is meant to be optional, why not provide in the enactment for optional execution? If it is mandatory it should be either enforced or repealed.

It will perhaps be interesting to review the mandatory and optional features of existing laws and to record the facts concerning their enforcement as demanded or permitted by statute. By studying these facts it is hoped to throw some light on the causes of their lack of functioning as designed, with the view to overcoming their ills in a model law.

1. INDIANA.

Date of Law: March 9, 1907.

The organization of an executive Committee for each institution and investigation by each such committee are mandatory; but designations for the surgical operation are optional with the board of managers and the committee of and for each institution.
a. Names and Addresses of Executive Agents—Legal Designation.

Committee of Experts.

Committee for the Jeffersonville Reformatory.
Dr. David C. Peyton, Superintendent of the Reformatory, Jeffersonville, Ind.
Dr. Harry C. Sharp, West Baden, Ind.
Dr. William M. Varble, Jeffersonville, Ind.

Other institutions subject to the act:
Indiana State Prison, James R. Reid, Warden, Michigan City.
Indiana Women’s Prison, Emily E. Rhoades, Superintendent.
Indiana Girls’ School, Lilian Meyncke, Superintendent, Clermont.
Indiana Boys’ School, Guy C. Hanna, Superintendent, Plainfield.
Central Indiana Hospital for the Insane, Dr. George F. Edenharter, Superintendent, Indianapolis.
Eastern Indiana Hospital for the Insane, Dr. Samuel E. Smith, Superintendent, Richmond.
Northern Indiana Hospital for the Insane, Dr. Fred W. Terflinger, Superintendent, Logansport.
Southern Indiana Hospital for the Insane, Dr. C. E. Laughlin, Superintendent, Evansville.
Southeastern Indiana Hospital for the Insane, Dr. E. P. Busse, Superintendent, Cragmont, near Madison.
Indiana School for Feeble-Minded Youth, Albert E. Carroll, Superintendent, Fort Wayne.
Indiana Village for Epileptics, Dr. W. C. Van Nuys, Superintendent, New Castle.

So far as can be ascertained none of these institutions has appointed its committee of experts.

b. History and Extent of Sterilizing Operations.

All of the Indiana operations have been performed at the Jeffersonville Reformatory. In order to obtain a first-hand report of the history of the movement and to observe at close range the actual working of the law a subcommittee of the committee, consisting of the Chairman and Secretary, visited the Jeffersonville Reformatory in January, 1912, this being the only institution in Indiana attempt-
ing to enforce the law. Due credit must be given to Dr. H. C. Sharp, Surgeon at the Reformatory, during the agitation for and the early execution of the law, for energetically promoting and courageously trying out this important eugenical experiment. The committee was courteously received by Dr. David C. Peyton, superintendent of the institution, who was one of the chief advocates of the law, and every opportunity for thorough investigation was given. Three cases of vasectomy were performed on voluntary candidates for the instruction of the committee. More than a dozen sterilized men in the Reformatory were examined by the committee with a view of determining their physical, mental and moral make-up with especial reference to the effects of vasectomy on the sexually perverted instincts and practices, and a trained investigator was left in charge to complete the case history records, and to study the family histories of the vasectomized men in their home territories. In all, thirty pedigrees were obtained. The accompanying pedigree of the W—family is typical of what the committee found to be the prevailing type of inheritance lines, which were being cut off by vasectomy in Indiana.

**Pedigree of the W-- Family of-- Indiana.**
The family is full of shiftlessness, degeneracy and immorality. Certainly no patriotic person could possibly desire that the person sterilized should reproduce his kind, yet if he should reproduce at all, what else could he have done? His inheritance was against him. He could not be persuaded not to beget children, for he had no sex control; he was morally feeble. The only objection to this sterilization in particular consists in the fact that the investigation of the family history came after instead of before the operation. However, the committee was not able to find a single case wherein it felt that good traits had been cut off or wherein a potential parent of valuable citizens had been rendered sterile. It is not likely that an intelligent executive commission would often make mistakes. Even so the state owes it, and the bills of rights of most states insure it, that natural endowments of such importance to the individual as the reproductive power be not taken away (except for medical necessity) without due process of law. It is incumbent upon the state to prove social menace before thus depriving an individual member of society, but when such menace is proved it is equally incumbent upon a progressive order to remove, in the interests of national perpetuity, such a menace.

All of the Indiana operations were vasectomies and were performed by Dr. H. C. Sharp, surgeon of the Jeffersonville Reformatory, who, besides being the chief advocate of the law, is now a member of the board of control of the Jeffersonville Reformatory. His first operation was performed in 1899, eight years before the enactment of the law, and during this interval the operation was performed by him on one hundred and seventy-six men at their own request. During 1907 and 1908 about 125 compulsory operations were performed.

However, during the administration of Governor Thomas R. Marshall, 1909-1913, compulsory operations have been very much in disfavor; the institution authorities did not resort to it on account of the Governor's displeasure.

c. Legal Status.

"Constitutionality of act never questioned in court."

THOS M. HORRAN, Att'y Gen., Aug. 11, 1913.
d. Comment:

“No appropriation; not contemplated by the law. Law defective in that regular court procedure is not provided for. Present law very probably unconstitutional. Law should state plainly that it is the purpose of preventing procreation of the unfit and not remedial.”

J. N. Hurty,
State Commissioner of Health, Sept. 10, 1913.

... the Indiana law is the worst in my opinion, from a constitutional standpoint. ... It allows the Board of Managers no voice in the determination of the question; it makes no provision for counsel, for a hearing, nor for any resort to a court. ... it does not interpose a single safeguard which is extended by other laws relating to liberty or property with which I am familiar, and it seems to me to disregard every constitutional safeguard for a fair and impartial hearing.

Chas. A. Boston, Esq.,
Dec. 14, 1911, discussion of Dr. J. N. Hurty’s paper on sterilization.

“No appropriations were ever made for this work. But the payments for services of the commissioners were always made out of the maintenance appropriation. In my opinion it is the first most important step looking to the cessation of reproduction of the hopelessly defective classes, the second important manner of handling being segregation in permanent custodial care. With our present absolute knowledge of the laws of reproduction why should any state or nation want to have continued the reproduction of those that are hopelessly unfit for citizenship and serve only as a useless tax upon the resources of those capable of citizenship.”

David C. Peyton,
Superintendent of Jeffersonville Reformatory, Aug., 1913.

2. WASHINGTON.

Date of Law: March 22, 1909.

No special executive machinery is provided for; but the order for the surgical operation is optional with the judge passing sentence on guilty rapists.

a. Names and Addresses of Executive Agents.


b. History and Extent of Sterilizing Operations.

No operation up to August 23, 1913. However, two orders have been issued by the courts—1. Peter Feilen; 2. W. H. H. Revenue, under life sentence in state penitentiary, operation not to be performed until further order from the court.
c. Litigation and Legal Status.

Case of Peter Feilen: Convicted of rape on female under 10 years. Judge of Superior Court of King County, Main J., acting on recommendation of jury, authorized warden of state's prison to have vasectomy performed upon him. Appeal was entered by said Feilen September 30, 1911, but the decision of the court was sustained on the ground that the operation was not “cruel and unusual.” Execution of sentence on Feilen in abeyance, pending expiration of time for appeal to the United States Supreme Court, September, 1913.

Superintendent Henry Drum, of the Washington State Penitentiary at Walla Walla, under date of August 23, 1913, says:

In case of Peter Feilen no action has been taken, as yet, to carry into effect that provision of the sentence calling for vasectomy; the status of the case being that it has been held in abeyance until the expiration of the time for appeal to the United States Supreme Court, which, as I understand it, will be in September of this year. There are petitions from friends of this man who do not believe he was justly convicted or that the crime of which he was convicted ever occurred. What the final result will be cannot at this time be determined.

We have one other case here—that of a young man of doubtful normal mental condition. In this case the commitment contains an order that “an operation be performed upon the said William Henry Harrison Revenue for the prevention of procreation, and said operation not to be performed until further order from the Court.” It might appear that the intention of the Court, in making the provision that the operation should not take place until further orders of the Court, was that it should be a saving clause in the event that the young man, now under life sentence, should be discharged from prison.

Under date of November 4, 1913, Superintendent Drum writes: . . . There have been no further developments with Peter Feilen, nor in the Revenue case. No new case along this line has come to my attention.

d. Comment:

A purely optional and punitive statute that should be recast into an operable eugenical measure.

3. CALIFORNIA.

Dates of Laws April 26, 1909, and June 13, 1913.

At the option of the heads of Institutions the examining board must make investigations; but the ordering of the surgical operation is dependent upon finding the same desirable, and even then is optional. (Second statute). In the second statute the same organiza-
tion and procedure is followed, but in addition a special commission of lunacy is given authority, at its discretion, to examine and to sterilize before discharge inmates of institutions.

a. Names and Addresses of Executive Agents.

A. State Commission in Lunacy.
   Hon. Hiram W. Johnson, Governor.
   Hon. Frank C. Jordan, Secretary of State.
   Dr. F. W. Hatch, General Superintendent of State Hospitals.
   Dr. W. F. Snow, Secretary of State Board of Health.

B. A series of bodies without legal title, one for each institution, consisting of:
   1. Resident physician of the particular state institution.
   2. Dr. F. W. Hatch. General Superintendent of State Hospitals.
   3. Dr. W. F. Snow, Secretary of State Board of Health.

Institutions subject to the act:

Stockton State Hospital, Dr. Fred P. Clark, Medical Superintendent.
Napa State Hospital, Dr. A. E. Osborne, Medical Superintendent.
Agnews State Hospital, Dr. Leonard Stocking, Medical Superintendent.
Mendocino State Hospital, Dr. E. W. King, Medical Superintendent.
Southern California State Hospital, Dr. John A. Reiley, Medical Superintendent.
Sonoma State Home, Dr. Wm. S. G. Dawson, Medical Superintendent.

b. Legal Status.

No litigation as yet. Constitutionality never seriously questioned.

A simple, direct statute. Does not provide for court review. Operative because of the activity and competency of its executive agents. If sterilization is inconsequential enough to fall within the regulation of police or health authorities, this statute is perhaps sufficient; but if sterilization is of considerable consequence in relation
to individual rights, then every operation should be preceded by due process of law. Such a process need not be cumbersome; it would under the model law be swift. The object in such a process is to insure to the individual operated upon his rights; that if he possesses not a defective heredity his line of descent shall not be cut off.

c. History and Extent of Sterilizing Operations.

California must be credited with the best enforced sterilization law on the statute books of the twelve states having such laws.

Dr. F. W. Hatch, General Superintendent of the California State Hospitals, under date of June 21, 1912, reports to the committee the following situation in regard to sterilization in California:

The law of California authorizing asexualization is by no means a perfect law, and yet this very imperfection has been the means possibly of acquainting a portion of the public of the probabilities and benefits of the operation.

In putting the law in action in the State Hospitals we have proceeded cautiously and avoided in the great majority of cases any arbitrary action in compelling patients to submit to the operation. It has been recognized as a very radical change in methods, a proceeding about which there was very much disagreement and some considerable feeling. Our plan of proceeding with the work follows an agreement with the Secretary of the State Board of Health and myself, that relatives, where possible should be consulted, the operation explained to them, and their written consent obtained before the work was performed. In many cases where relatives were not to be located and where patients were on the road to recovery and in a state to sensibly consider the subject, we have obtained the consent of patients. In a few rare cases we have operated against the wish of the patients.

The superintendent of a hospital having cases that he believes should be operated upon, takes the case up with the father, mother, husband, or wife, as the case may be, either by letter or personal interview and explains the desirability of the operation, its results, its possible dangers. Consent having been obtained from the nearest relative or relatives, a history of the case with the recommendation of the medical superintendent is sent to my office where the report is considered by the Secretary of the State Board of Health and myself, and our consent granted, if in our opinion it is desirable. The superintendent on being notified of our consent, proceeds with the operation, a report of the work being sent to and kept on file in the office of the Lunacy Commission.

Among those of the male sex the operation is uniformly vasectomy: a local anesthetic is used; the lower end of the vas is left open so that the spermatozoa are discharged into the sac and reabsorbed into the general system.

In the women the usual operation is a salpingectomy, though an occasional oophorectomy is done in cases where diseased conditions seem to indicate it.

Fifty per cent. of the men had either an insane or alcoholic inheritance that could be ascertained. Many of those operated upon have been discharged and are living at home in comfort. As a general rule all are benefited to some extent by the operation. In some of the vasectomy cases but little improvement in the mental condition is to be noted. We endeavor to
keep track of those who are discharged and receive reports from time to time. We have found no ill effects. No interference has been noted in the marital relations.

Properly applied, I believe that sterilization will be of great benefit to humanity if generally adopted.

There is no question but sterilization of confirmed criminals, habitual drunkards, and drug habitues, epileptics, sexual and moral perverts in reformatories and other places of detention, those suffering from the acute recurrent psychosis, is a proper proceeding, and for the benefit of mankind.

The figures on heredity that I have given do not fairly represent the actual amount of inheritance as in many cases we could obtain no family history, though the character of the mental affection would indicate previous disease in ancestry. In our experience in this state we find very much less trouble in obtaining consent of relatives at the present time than when we first commenced the work. It is apparent that the public are being educated up to the value of the work.

It is still too early to estimate the efficiency of the new statute.

In the report of the Commission in Lunacy, June 30, 1912, Dr. Hatch says (pages 21 and 23):

In several of the states that have adopted sterilization or asexualization laws it is clearly stated that it is a proposition of eugenics, “a cutting off of the inheritance lines.” In California the purpose is for the physical, moral, or mental benefit of the patient. We have found that it does many patients much good, while in others there has been little effect on the mental condition, but generally some improvement in the general health. Under the operations of the law we have in the state hospitals and the home for feeble-minded asexualized 268 persons, 150 men and 118 women, while one has been operated upon in state prison.

Much credit is due the superintendents of the Southern California State Hospital and Stockton State Hospital, who have done most of the work, for their patience and painstaking energy. The question of asexualization is becoming more generally discussed by those who look deeply into the question of the influence of heredity in the production of that “permanent underlying state of the nervous system, which we commonly call predisposition.”

In putting this law into active work we have tried to keep track of such cases operated upon as we could, in order that we might have knowledge of their subsequent experiences and feelings about it. Such as have reported have felt no ill effects, but on the contrary have expressed satisfaction that the operation has been done. The relatives have cooperated with us in an unexpectedly affirmative way, and at times mothers of young girls with unfortunate histories have requested that the work be done for protection's sake. We have in but very few cases operated upon women without consent.

Our work of gaining the consent of the relatives has demonstrated a reasonableness to suggestion and explanation that has been encouraging and that is regarded as evidence, not only of their belief that the operation may be of benefit to the physical, moral or mental welfare, but also the recognition of it as a means of preventing possible future dangers.

4. CONNECTICUT.

Date of Law: August 12, 1909.

The organization and activity of the commission is mandatory and so is the surgical operation if defective heredity is found.
a. Names and Addresses of Executive Agents.

Legal designation: “A board,” which for each institution consists of the superintendent of the institution and the skilled surgeons appointed by the directors of each particular institution.

For the State Prison at Wethersfield:

Dr. Edward S. Fox, Physician, to the State Prison, Wethersfield, Conn.

For the State Hospital for the Insane at Middletown:

Dr. H. S. Noble, Superintendent of Connecticut Hospital for the Insane at Middletown.

Dr. Everitt J. McKnight, 110 High street, Hartford, Conn.

Dr. William H. Carmalt, 261 St. Ronan street, New Haven, Conn.

For the State Hospital for the Insane at Norwich:

Dr. H. M. Pollock, Superintendent of State Hospital for the Insane at Norwich.

Dr. Harry Lee, New London, Conn.

Dr. William L. Higgins, South Coventry, Conn.

These three institutions only are named in the statute; by inference the law does not apply to any other institutions in the State.

b. History and Extent of Sterilizing Operations.

The Board has been called together but once at the State Prison. Four or five candidates for the operation of vasectomy were presented, but in no one was a history obtainable sufficient to justify the operation. With one exception they were sentenced for sexual crimes and the Board did not feel that it could advise the operation with the meagre family history given. In the exceptional case noted the convict was a horse thief who thought if the operation of vasectomy was performed it could be used as an argument for his release from prison.

W. H. CARMALT.

Dr. Henry M. Pollock, Superintendent of the Norwich State Hospital, under date of Oct. 27, 1913, reports that seven persons, 2 men and 5 women—all (with the exception of one woman—March, 1911) since 1913—

have been under the law operated upon at this institution and two of the women have already left the hospital, as they could in consequence of the operation be safely released from custodial care. Vasectomy was performed on the male cases and complete ovariotomy on the female. I also beg to advise you that at least one additional male case will shortly be reported to the Board of Trustees and that in all probability other cases will be presented within the coming year. I should like to add that, due to the opposition which apparently developed at the time of the enactment of the law, upon
my recommendation to the Board of Trustees, they decided that no cases were to be referred to the surgical board until they had been considered by the entire medical staff of the institution and the majority of the staff decided that such an operation would be advisable nor until a synopsis of their family and personal history had been brought before the Board of Trustees at a regular meeting and the Board had sanctioned the reference to the surgical board. This was not only with the idea of satisfying the public that the operation was not performed in a haphazard manner, but only after careful study and also to properly safeguard the patients in the institution.

Dr. Pollock also reports several voluntary cases operated upon for individual reasons without invoking the eugenical sterilization law.

c. Legal Status.

There has been no litigation under the statute. In an opinion given to the Warden of the Connecticut State Prison December 9, 1912, the Attorney-General expressed the opinion that the statute is constitutional.


d. Comment:

The law as it stands is practically inoperable as the presentation of candidates rests entirely upon the judgment, i.e., fancy, of the superintendent in charge, and if he is opposed to the law as in the cases of the superintendents of the two Insane Hospitals, none are presented. The Board or some impartial authority should have the power to examine the inmates independent of the Executive of the Hospital. Besides there are no funds to pay for a proper genealogical history, without which no operation should be performed in the judgment of the Board.

The Board is paid at the option of the Superintendent of the respective institution from its general funds.

W. H. CARMALT.

I cannot agree with the statement that the law as it now stands is practically inoperable. The attorney-general has decided that the law is constitutional, and we anticipate more and more having the operation performed upon suitable individuals. We do not, however, expect to have the operation performed at this hospital until after each individual case has been given careful consideration. We anticipate that the field worker now at this institution will secure reliable information of the family and personal history and will thus be a great help in assisting us in deciding in regard to the advisability of the operation being performed.

H. M. POLLOCK,
Superintendent of the Norwich State Hospital.

5. NEVADA.

Date of Law: March 17, 1911.

No special executive machinery is provided for; but the order for the surgical operation is optional with the judge passing sentence on guilty rapists.
a. Names and Addresses of Executive Agents.

The Criminal Courts of the state.
D. D. Dickerson, Warden Nevada State Prison, Carson City, Nevada.

b. History and Extent of Sterilization Operations.

No sentence of sterilization as yet (Aug. 18, 1913).

c. Legal Status.

Comment: No litigation as yet. Modeled after the Washington statute. A purely punitive statute that should he recast into an operable eugenic measure.

6. IOWA.

Dates of Laws: April 10, 1911, and April 19, 1913.

Both statutes make the organization and activity of the executive machinery mandatory, and also the surgical operation if defective heredity is found.

a. Names and Addresses of Executive Agents.

The Managing Officer and the Physician of each state institution, together with the State Board of Parole.

State Board of Parole:

W. H. Berry, Indianola, Iowa.
David C. Mott, Marengo, Iowa.
John E. Howe, Greenfield, Iowa.

Institutions subject to the act:

Iowa State Penitentiary, J. C. Sanders, Warden, Fort Madison.
The Reformatory, Charles G. McClaughry, Superintendent, Anamosa.
Industrial School for Boys, W. L. Kuser, Superintendent, Eldora.
Industrial School for Girls, F. P. Fitzgerald, Superintendent, Mitchellville.
Clarinda State Hospital, Max E. Witte, Superintendent, Clarinda.
Independence State Hospital, Dr. W. P. Crumbacker, Superintendent, Independence.
Cherokee State Hospital, Dr. W. N. Voldeng, Superintendent, Cherokee.
Mount Pleasant State Hospital, C. F. Applegate, Superintendent, Mount Pleasant.
State Hospital for Inebriates, H. S. Miner, Superintendent, Knoxville.
Iowa Institution for Feeble-Minded Children, Dr. George Mogridge, Superintendent, Glenwood.
In addition to these state institutions the law would seem to include the county institutions as well, the inclusive phrase of the statute being “each public institution in the state.”

b. History and Extent of Sterilization Operations.

No operations reported as performed under the act, although a few operations such as contemplated by the law have been performed, with the consent of relatives of patients at the hospitals for the insane.

c. Legal Status.

Comment: No litigation as yet.
Iowa authorities express to this committee their opinion that the new statute will be more operable than the old one. One provision of the new act provides that the Board of Parole shall make an annual report of their proceedings under the act, to the Governor, and shall submit their observations and statistics regarding its benefits. Evidently the Iowa Legislature expects the act to function and is still open to enlightenment on the subject.

7. NEW JERSEY.

Date of Law: April 21, 1911.
The statute makes the organization of the executive commission mandatory, and in general requires its activity, but it is optional with the commission whether or not the order be given for surgical sterilization.
a. Names and Addresses of Executive Agents.

Legal designation:
Board of Examiners of Feeble-Minded, Epileptics, and Defectives:
   Dr. Henry B. Costill, 21 N. Clinton Avenue, Trenton, N. J.
   Dr. Alexander Marcy, Sr., 408 Main street, Riverton, N. J.,
   and Joseph P. Byers, ex officio, Commissioner of Charities and Corrections,
   State House, Trenton, N. J.

Institutions subject to the act:

   New Jersey State Prison, Samuel W. Kirkbride, Supervisor,
   Trenton, N. J.
   New Jersey Reformatory, Dr. Frank Moore, Superintendent,
   Rahway, N. J.
   New Jersey State Home for Girls, Elizabeth V. Mansell, Super-
   intendent, Trenton, N. J.
   New Jersey State Home for Boys, John C. Kalleen, Superin-
   tendent, Jamesburg, N. J.
   New Jersey State Hospital, Dr. Henry A. Cotton, Superin-
   tendent, Trenton, N. J.
   New Jersey State Hospital at Morris Plains, Dr. Britton D.
   Evans, Medical Director, Greystone Park, N. J.
   New Jersey State Village for Epileptics, Dr. David F. Weeks,
   Superintendent, Skillman, N. J.
   New Jersey State Institution for Feeble-Minded Women, Dr.
   Madeline A. Hallowell, Superintendent, Vineland, N. J.

In addition the county institutions of the 21 counties of the state
are subject to this act.

b. History and Extent of Sterilization Operations.

Up to August 1, 1913, no operations had been performed under
the act. If the Supreme Court decides that the statute is constitu-
tional, it is expected that the act will be more actively enforced.

c. Litigation and Legal Status.

Test Case of Alice Smith: Ward of the state and inmate of
State Village for Epileptics at Skillman, selected by commission for
the purpose of testing the constitutionality of the law. Papers filed
with County Clerk, November 12, 1912; writ of certiorari was served on the Attorney-General December 26, 1912. Constitutionality of the law in part denied, November 18, 1913. See decision of Supreme Court cited at page 54.

The New Jersey statute . . . is designed to interpose several of these safeguards (i. e., those of personal rights lacking in the Indiana statute—Ed.), but as they grow in constitutional soundness it seems to me that these laws lose in the possibility of practical efficiency on account of the delay and expense necessarily incident to the trial such as is called for by the New Jersey law. . . .

CHAS. A. BOSTON, Esq.,

d. Appropriation available.

Initial appropriation of $500.00. The two appointive members to receive $10.00 per day for all meetings held at institutions, same being paid by the institution for which the service is rendered.

8. NEW YORK.

Date of Law: April 16, 1912.

The organization and the activity of the board of examiners is mandatory and so is the operation if defective heredity is found. The order for the surgical operation is subject to court review.

a. Names and Addresses of Executive Agents.

Legal designation: Board of Examiners of Feeble-Minded, Criminals, and Other Defectives:

Dr. Charles H. Andrews, Surgeon, 588 W. Delaware Street, Buffalo, N. Y.
Dr. Lemon Thompson, Neurologist, 28 Maple Street, Glen Falls, N. Y.
Dr. Charles C. Duryea, Practitioner, 1352 Union Street, Schenectady, N. Y.

Institutions subject to the act:
Auburn State Prison, Auburn, N. Y. G. W. Benham, Warden.
LEGAL, LEGISLATIVE AND ADMINISTRATIVE ASPECTS OF STERILIZATION.

Sing Sing Prison, Ossining, N. Y.  J. S. Kennedy, Warden.
Great Meadow Prison, Wingdale, N. Y.  W. J. Homer, Warden.
State Farm for Women, Valatie, N. Y.  John H. Mealey, Warden.
State Agriculture and Industrial School, Industry, N.Y.  David Bruce, Superintendent.
New York State Training School for Girls, Hudson, N. Y.  Dr. Hortense V. Bruce, Superintendent.
Western House of Refuge for Women, Albion, N. Y.  Alice E. Curtin, Superintendent.
New York State Reformatory for Women, Bedford, N. Y.  Dr. Katherine B. Davis, Superintendent.
New York State Training School for Boys, Yorktown Heights, N. Y.  F. H. Briggs, Superintendent.
Syracuse State Institution for Feeble-Minded Children, Syracuse, N. Y.  Dr. O. H. Cobb, Superintendent.
State Custodial Asylum for Feeble-Minded Women, Newark, N. Y.  Dr. Ethan A. Nevan, Superintendent.
Rome State Custodial Asylum, Rome, N. Y.  Dr. Charles Bernstein, Superintendent.
Craig Colony for Epileptics, Sonyea, N. Y.  Dr. William T. Shanahan, Superintendent.
Letchworth Village, Thiells, N. Y.  Dr. Charles S. Little, Superintendent.
Matteawan State Hospital, Fishkil-on-Hudson, N. Y.  Dr. John W. Russell, Superintendent.
Utica State Hospital, Utica, N. Y.  Dr. H. L. Palmer, Superintendent.
Willard State Hospital, Willard, N. Y.  Dr. Robert M. Elliott, Superintendent.
Hudson River State Hospital, Poughkeepsie, N. Y.  Dr. C. W. Pilgrim, Superintendent.
Middletown State Hospital, Middletown, N. Y.  Dr. M. C. Ashley, Superintendent.
Buffalo State Hospital, Buffalo, N. Y. Dr. A. W. Hurd, Superintendent.
Binghamton State Hospital, Binghamton, N. Y. Dr. C. G. Wagner, Superintendent.
St. Lawrence State Hospital, Ogdensburg, N. Y. Dr. R. H. Hutchings, Superintendent.
Rochester State Hospital, Rochester, N. Y. Dr. E. H. Howard, Superintendent.
Gowanda State Hospital, Gowanda, N. Y. Dr. D. H. Arthur, Superintendent.
Kings Park State Hospital, Kings Park, N. Y. Dr. W. A. Macy, Superintendent.
Central Islip State Hospital, Central Islip, N. Y. Dr. G. A. Smith, Superintendent.
Long Island State Hospital, Brooklyn, N. Y. Dr. E. M. Somers, Superintendent.
Mohansic State Hospital, Westchester, County, N. Y. Dr. I. G. Harris, Superintendent.
Manhattan State Hospital, Ward’s Island, N. Y. Dr. Wm. Mabon.

b. History and Extent of Sterilizing Operations.

Up to present time about 75 cases have been examined in the different institutions, and many of these will be proper cases for action by the Board, it is calculated; after necessary preliminary work has been done, the operative work will progress rapidly. The inmates of several institutions, as well as many not now in institutions, have requested the Board to operate on them.

BOARD OF COMMISSIONERS, May 10, 1913.

c. Appropriation Available.

The Legislature of 1913 appropriated (by Chapter 791) $5000 for the services and expenses of this board. Up to December 5, 1913, the expenditures from this appropriation amounted to $4217.52. For the expenditure of this amount it would have been reasonable to expect that the board would have at least begun field studies into the “family histories” of persons suggested for eugenical sterilization, as contemplated by the law, and have presented a test case to the courts for the purpose of determining the constitutionality of the act. The New Jersey Board, with less than one-tenth the expenditure, have accomplished this, and the Wisconsin Board, with only $2000 at their disposal, are about to undertake field studies.
d. Legal Status.

The law is ample authority for effective work but the Commission is moving slowly, investigating the records of inmates committed to institutions, their family histories, and the several matters involved with sterilization, such as after care, segregation, colony, life, etc.

It is the opinion of many that the Commission should operate on a number of typical dangerous cases, now under public care, and demonstrate the benefit of sterilization, that the people of the state may have opportunity to observe the physical, mental and moral effects following operations upon such persons.

ROBT. W. HILL,
Superintendent State and Alien Poor, Aug. 12, 1913.

9. NORTH DAKOTA.

Date of Law: March 13, 1913.

The organization of the executive machinery is mandatory; but nomination for the surgical operation is optional with heads of institutions, and the operation itself is optional with the board. By a second provision the chief medical officer of an institution, with the consent of the inmate, may perform the operation without bringing the matter to the attention of the board.

a. Names and Addresses of Executive Agents: Legal designation: Board of Examiners.

............... The Secretary of the State Board of Health, ex officio, the chief medical officer of the particular institution, and for each institution, a competent physician and surgeon appointed by the State Board of Control and holding office at their pleasure.

These officers and institutions are as follows:

J. W. Brown, Superintendent of State Reform School, Mandan, N. D.
F. O. Hellstrom, Warden of the State Prison, Grove, N. D.
W. M. Hotchkiss, Superintendent of Hospital for the Insane, Jamestown, N. D.
Dr. H. A. LaMoure, Superintendent of Feeble-Minded Institution, Grafton, N. D.

b. History and Extent of Sterilizing Operations.

Since the North Dakota law was enacted only a few months ago it is not yet possible to judge of its efficacy in actual operation.
This law is in keeping with the recommendations of this committee, in that of the seven state institutions under the State Board of Control, the inmates of the Reform School, Penitentiary, Hospital for the Insane, and Feeble-Minded Institution are subject to its provisions, while the students at the School for the Deaf at Devil’s Lake, the School for the Blind at Bathgate, and the patients of the Tubercular Sanitarium at Dunseith are exempt from its operation.

Under date of November 4, 1913, Mr. Ernest G. Wanner, Secretary of the Board of Control of State Institutions, writes:

... Our last legislature passed a bill authorizing sterilization of certain inmates in the Reform School, the Penitentiary, the Insane Asylum and the Feeble-Minded Institute. The bill provided that the sterilization was optional and in no case mandatory with the superintendent of the institution under the supervision of this Board.

We beg to inform you also that there is no use being made of the law at the Reform or Penitentiary institutions although the matter is being taken up in regard to the latter. There has been appointed as sterilization surgeon at the State Hospital for the Insane, Dr. R. G. DePuy of Jamestown, and as surgeon for the Institution for Feeble-Minded, Dr. J. E. Countryman of Grafton, N. D.

In regard to any active work done, we wish to state that there have been a number of males sterilized at the Hospital for Insane, and when the new building in course of construction is completed, offering proper hospital facilities, both males and females will be sterilized whenever it is thought proper. The nature of the operation on the female makes it dangerous at the institution at the present time.

If you will make the same request in about a year, we will be able to write you with more intelligence in regard to the results obtained.

10. MICHIGAN.

Date of Law: April 1, 1913.

As in Connecticut and Iowa, the activity of the board is mandatory, and so is the surgical operation, if defective heredity is found.

a. Names and Addresses of Executive Agents.

The law vests the execution of this statute in the management of the institutions, i.e., the managing boards and the superintendent, the inmates of which are subject to its provisions. The superintendents are as follows:

Dr. A. J. Noble, Superintendent of Kalamazoo State Hospital, Kalamazoo, Mich.

Dr. E. A. Christian, Superintendent of Pontiac State Hospital, Pontiac, Mich.
Dr. J. D. Munson, Superintendent Traverse City State Hospital, Traverse City, Mich.
Dr. E. H. Campbell, Superintendent Newberry State Hospital, Newberry, Mich.
Dr. O. R. Long, Superintendent Ionia State Hospital, Ionia, Mich.

b. History and Extent of Sterilizing Operations.

The legislative reference department informs us under date of October 29, 1913, as follows:

Under the law, all operations are to be reported to the State Board of Health, but inquiry at the office thereof shows that no reports have been made at this date.

11. KANSAS.

Date of Law: April 29, 1913.

Study by the commission is mandatory, and in case hereditary defect is found, it is mandatory to report the case to a court of record, upon which court, if it is satisfied that the finding is correct, it is mandatory to order the surgical operation. Negligence on the part of the head of an institution in examining inmates constitutes a misdemeanor and is punishable by fine and imprisonment.

a. Names and Addresses of Executive Agents.

The statute requires the initiative to be taken by the managing and medical officers of state institutions. These institutions and officers are as follows:

Topeka State Hospital (insane), Topeka, Kan., Dr. T. C. Biddle, Superintendent.
Osawatomie State Hospital (insane), Osawatomie, Kan., Dr. L. L. Uhls, Superintendent.
Parsons State Hospital (epileptics), Parsons, Kan., Dr. M. L. Berry, Superintendent.
School for Feeble-Minded, Winfield, Kan., Dr. Fred Cave, Superintendent.
The district court of the district in which the particular institution is located must pass upon the nominations of the management of the institution.

b. History and Extent of Sterilization Operations.

Since the law has been on the statute books only a few months, it is still too early to estimate its practicability.

12. WISCONSIN.

Date of Law: July 30, 1913.

The organization of the executive machinery is optional with the State Board of Control, but later provisions of the statutes imply the necessity of its organization. The selection of the individual for the operation and the ordering of the surgical operation are optional with the board.

a. Names and Addresses of Executive Agents.

The executive agents consist of one surgeon and one alienist, appointed by the State Board of Control, which surgeon and alienist act in conjunction with the superintendents of the state and county institutions. The appointment of the surgeon and alienist has not yet been made.

The institutions subject to the act are:

Wisconsin State Reformatory, Green Bay, Wis. C. W. Bowron, Superintendent.
Wisconsin State Hospital for Insane, Mendota, Wis. Dr. Chas. Gorst, Superintendent.
Northern Hospital for the Insane, Winnebago, Wis. Dr. Adin Sherman, Superintendent.
Wisconsin Home for Feeble-Minded, Chippewa Falls, Wis. Dr. A. W. Wilmarth, Superintendent.
Milwaukee County House of Correction, Milwaukee, Wis. W. H. Momsen, Superintendent.
Milwaukee Hospital for the Insane, Wauwatosa, Wis. Dr. M. J. White, Superintendent.

In addition to these there are thirty-five county asylums (71 counties) for the chronic insane.

b. Appropriation Available: The Wisconsin statute is supported by an initial appropriation of $2000. The State Board of Control has announced its intention of expending a part of this money in first hand field investigations into the hereditary traits of the persons nominated for the operation. This is most encouraging. It is also understood that a test case will soon be presented to the courts for the purpose of determining the constitutionality of the act. Should the act, which is purely a simple police measure, be found constitutional, should liberal appropriations follow, and should the State Board of Control follow out its present inclinations, the law should function splendidly. The executive machinery has simplicity and directness of control in its favor.

13. SUMMARY.

In the recent sterilization laws an entirely new social agency is being tried out, and the general legislative formula for an operative statute, making for the end sought, is only now being worked out by experimental laws. The laws already enacted are in part mandatory, and in part optional, and, in the absence of a general demand for action, there is little wonder that the executive machinery refuses to operate, especially where harmonious design is lacking, or adequate appropriations for the work are not provided, or where state officials are not eager to defend a new type of law of little popularity, and, as many of them are drawn up, of doubtful constitutionality. It, moreover, is evident that active hostility and opposition would arise if there should be a sudden attempt to practice legal eugenic sterilization in a thoroughgoing manner.

More eugenical sterilizing operations have been performed without the sanction of the law than have been performed under its provisions, or even under its shadow.

Altogether less than 1000 operations have been performed under the several laws. While each operation, if it cuts off a line of degenerates, is eugenically of value, and is not therefore to be despised, still if the whole problem of racial degeneracy is to be attacked by this method, sterilization on a vastly greater scale will have to be
resorted to. With the existing statutes there has been practically no public pressure brought to bear on officials nominally entrusted with carrying out the provisions of the law. This condition is due, doubtless, to the fact that public knowledge concerning the factor of heredity in human degeneracy—and therefore in anti-social conduct—is, generally speaking, very meagre. But as the facts concerning human heredity in general become more widely diffused and as eugenical field studies in many states ascertain in large measure the location of specific heritable defects in certain human strains, it is felt that there will be an awakening of a public eugenic conscience, and that in this field, as in so many others, society will not be long in appropriating for its own use the laws of nature which scientific study discovers.

The most slothful legislature or the most selfish administration must yield to popular pressure demanding social reform; but representative and progressive public servants will strive to lead in such matters.

The least that can be said in favor of these laws is that they have been worth while in that they have provided valuable data for the next step in the development of a consistent policy for the extirpation of innate defects and deficiencies.

The next chapter will analyze the specific shortcomings of the existing statutes, and Chapter VIII will attempt to present a model statute, profiting by the experiences of the twelve states which, under these pioneer laws, sought to achieve a betterment of the inborn capacities of the human stock by the use of this new social agency.

CHAPTER VII.

CRITICISM OF EXISTING LAWS.

These criticisms are based largely upon the data recorded in Chapter VI, The Working Out of Existing Laws. In addition to the facts thus recorded, the eugenical problems involved have been carefully considered. For the purpose of convenience let the criticisms be discussed under the following headings:

1. Motive and prevailing spirit of the statute.
<table>
<thead>
<tr>
<th>State</th>
<th>I. Mandatory and Optional Features</th>
<th>II. Nature of Examination Required</th>
<th>III. Criteria for Determining Upon the Operation</th>
<th>IV. Legal Basis of Order</th>
<th>V. Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. Organisation of the Executive Body</td>
<td>2. Investigation by the Executive Body</td>
<td>3. Operation if Certain Defects are Found</td>
<td>1. Mental or Physical Condition</td>
<td>2. Mental History</td>
</tr>
<tr>
<td>1. Indiana</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Optional</td>
<td>Mental and physical</td>
<td>&quot;Inadvisable&quot;</td>
</tr>
<tr>
<td>2. Washington</td>
<td>None provided</td>
<td>Optional</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. California</td>
<td>All ex-officio</td>
<td>Mandatory</td>
<td>Optional</td>
<td>&quot;Full particulars&quot; of mental and physical</td>
<td>Benefit to the individual</td>
</tr>
<tr>
<td>4. Connecticut</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mental and physical</td>
<td>&quot;Record&quot;</td>
</tr>
<tr>
<td>5. Nevada</td>
<td>None provided</td>
<td>Optional</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Iowa</td>
<td>All ex-officio</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mental and physical</td>
<td>&quot;Record&quot;</td>
</tr>
<tr>
<td>7. New Jersey</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Optional</td>
<td>Mental and physical</td>
<td>&quot;Inadvisable&quot;</td>
</tr>
<tr>
<td>8. New York</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mental and physical</td>
<td>&quot;Record&quot;</td>
</tr>
<tr>
<td>9. North Dakota</td>
<td>Mandatory</td>
<td>Optional</td>
<td>Optional</td>
<td>Mental and physical</td>
<td>&quot;As far as practical&quot;</td>
</tr>
<tr>
<td>10. Michigan</td>
<td>All ex-officio</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mental and physical</td>
<td>&quot;Record&quot;</td>
</tr>
<tr>
<td>11. Kansas</td>
<td>All ex-officio</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mental and physical</td>
<td>&quot;History&quot;</td>
</tr>
<tr>
<td>12. Wisconsin</td>
<td>Mandatory</td>
<td>Optional</td>
<td>Optional</td>
<td>Mental and physical</td>
<td>&quot;Inadvisable&quot;</td>
</tr>
<tr>
<td>Recommended Model Law</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mandatory</td>
<td>Mental and physical</td>
<td>&quot;Record&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## II. Administrative Details Provided by the Existing Sterilization Laws

<table>
<thead>
<tr>
<th>State</th>
<th>Executive Agents</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10 Source of Funds for...</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) appointed by</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(a) Investigation by</td>
</tr>
<tr>
<td></td>
<td>(b) directly responsible for</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(b) Surplus if any</td>
</tr>
<tr>
<td>Indiana</td>
<td>Management of each Institution</td>
<td>Not mentioned*</td>
<td>&quot;Committee of experts&quot;</td>
<td>Committee of experts</td>
<td>Committee of experts</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Committee of experts</td>
<td>None provided</td>
</tr>
<tr>
<td>Washington</td>
<td>Ex-officio</td>
<td>Not mentioned*</td>
<td>None</td>
<td>Court passing sentence on rapists</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Presumably ward of the court</td>
<td>Not mentioned*</td>
<td>By implication of the court</td>
<td>Not mentioned*</td>
</tr>
<tr>
<td>California</td>
<td>All ex-officio</td>
<td>Not mentioned*</td>
<td>State Committee in Lunacy; for criminals, mentally ill, and insane in State prison</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Superintendent of State Hospital in certain cases, in others not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>None provided</td>
</tr>
<tr>
<td>Connecticut</td>
<td>One ex-officio; two by institutional management</td>
<td>Not mentioned*</td>
<td>None; &quot;a board&quot;</td>
<td>The Board of Parole</td>
<td>Majority</td>
<td>Not mentioned*</td>
<td>Member of board duly appointed for the task</td>
<td>Not mentioned*</td>
<td>None of the members of the board</td>
<td>Not mentioned*</td>
</tr>
<tr>
<td>Nevada</td>
<td>Ex-officio</td>
<td>Not mentioned*</td>
<td>None</td>
<td>Court passing sentence on rapists</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Presumably ward of the court</td>
<td>Not mentioned*</td>
<td>By implication of the court</td>
<td>Not mentioned*</td>
</tr>
<tr>
<td>Iowa</td>
<td>All ex-officio</td>
<td>Not mentioned*</td>
<td>None</td>
<td>Court passing sentence on rapists</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Presumably ward of the court</td>
<td>Not mentioned*</td>
<td>By implication of the court</td>
<td>Not mentioned*</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Governor with advice of the Senate</td>
<td>Not mentioned*</td>
<td>&quot;Board of Examiners for Feeble-Minded, Epileptics and Defectives&quot;</td>
<td>Managing Office of Institution</td>
<td>Board of Examiners</td>
<td>Not mentioned*</td>
<td>Notification and hearing</td>
<td>Not mentioned*</td>
<td>&quot;Any person, so far as the laws&quot;</td>
<td>Not accountable</td>
</tr>
<tr>
<td>New York</td>
<td>Governor</td>
<td>Not mentioned*</td>
<td>&quot;Board of Examiners for Feeble-Minded, Epileptics and Defectives&quot;</td>
<td>Board of Examiners</td>
<td>Majority</td>
<td>Notification and hearing</td>
<td>Member of board duly appointed for the task</td>
<td>Not mentioned*</td>
<td>None of the members of the board</td>
<td>Not mentioned*</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Two ex-officio; one by State Board of Control</td>
<td>Not mentioned*</td>
<td>&quot;Board of Examiners for Feeble-Minded, Epileptics and Defectives&quot;</td>
<td>Managing Office of Institution</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>None provided</td>
</tr>
<tr>
<td>Michigan</td>
<td>All ex-officio</td>
<td>Not mentioned*</td>
<td>None; &quot;a board&quot;</td>
<td>Management of particular institution</td>
<td>Majority</td>
<td>Notification; 30 days</td>
<td>Managing board of the particular institution</td>
<td>Not mentioned*</td>
<td>&quot;Competent physician and surgeon&quot;</td>
<td>Not accountable</td>
</tr>
<tr>
<td>Kansas</td>
<td>All ex-officio</td>
<td>Not mentioned*</td>
<td>None; &quot;authority&quot;</td>
<td>Managing officers of said institution</td>
<td>Not mentioned*</td>
<td>Hearing</td>
<td>Managing officer of the particular institution</td>
<td>Not mentioned*</td>
<td>One of the Commissioners designated by the court</td>
<td>Not mentioned*</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>State Board of Control</td>
<td>None</td>
<td>State Board of Control</td>
<td>Unanimous vote</td>
<td>Notification; 30 days</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not mentioned*</td>
<td>Not provided for</td>
</tr>
</tbody>
</table>

*In cases wherein responsibility of the executive body for its general efficiency and of the person upon whom it is incumbent to execute the order are not in the statute stated as specifically due to a certain named higher authority, it is presumed, in every instance, to be due directly to the appointing power and indirectly and ultimately to the Governor.
2. The viewpoint as to the import of sterilization: whether it be held to be within police regulatory powers, or whether it be deemed of sufficient consequence to require, in each case, due process of law.

3. The executive agencies provided.

4. Persons subject to the law.

5. Procedure in nominating persons for sterilization.


7. Criteria for determining upon sterilization.

8. Types of surgical sterilizing operations authorized.

9. Operability, including the responsibility for and the mandatory element in each step.

10. Appropriations available.

The accompanying tables (I. Organization and Procedure, etc., and II. Administrative Details, i.e., Charts 4 and 5) trace the claim of procedure and the concurrent claim of responsibility in the execution of the existing laws; and supply in concise form the additional data needed in this criticism. From a study of these tables it is hoped to throw some light upon the reasons why the existing statutes do not operate as designed. Indeed, it is held by some that legislation can in no way aid the extirpation of hereditary defectiveness; this idea was expressed by Governor Pennypacker in vetoing the Pennsylvania act. The committee, however, takes a different view, namely, that legislation in a well organized and honestly administered state can provide effectually for the execution of logical plans for social betterment, and that a statute based upon the experience of the earlier experimental sterilization laws and scientific truth can be drawn up, which will, if competently administered, function as designed.

1. Motive and prevailing spirit of the statutes.

All of the existing sterilization laws are by implication eugenic, which implication means that the authors of the laws held that heredity is responsible in a greater or less degree for degeneracy and anti-social conduct. The acknowledgment of such is found in the preambles of the statutes of Indiana, Iowa, New Jersey, Kansas, and North Dakota, while the latter state adds to its statute an emergency clause in hastening the application of the law, stating, among other things, “whereas heredity plays a most important part in the trans-
mission of crime, insanity, idiocy, imbecility, etc." Heredity is acknowledged more directly in the body of the Connecticut and New Jersey statutes. So far as can be ascertained from the preambles and texts of the statutes, the laws of Indiana, New York, New Jersey and Wisconsin are purely eugenical, while those of Connecticut, Iowa, North Dakota, Michigan, Kansas, and Oregon are also in part therapeutic.

Two of the states—Washington and Nevada—provide for sterilization from a punitive motive, their statutes are eugenical only by implication. In several others—California, Iowa, and Oregon (the last now revoked)—the punitive element is present, but it is subordinated either to the eugenical or therapeutic. Lines of human descent should be cut off because they are dangerous to the state, not because their carriers have committed statutory offenses; the remedy should be applied directly to the cause. In following the indirect route, wrong might many times be wrought. The punitive laws provide for such punishment only in retribution for such heinous crimes—apparently possible only to a low order of humanity—that it is not likely that injustice and eugenic wrong would often be wrought, but even the possibility of such should be guarded against. In every case wherein sterilization is in whole or in part punitive, it is meted out as punishment for some type of sexual offense. In this there is an implied eugenical motive, but such provisions are perhaps the result of a vindictive feeling that such retribution is especially fitting for such offenses.

Since eugenic sterilization is in no sense a punishment, the selection for sterilization by a non-judicial procedure, of individuals who have been duly and often involuntarily by due process of law committed to the state’s custody as persons who are socially inadequate, does not, as some have held, resemble twice placing life and limb in jeopardy for the same offense. The basis of designation for sterilization is inferior potential parenthood; that for committing to institutions is anti-social or incompetent conduct. These two motives should not be confused with each other—nor should the two be considered synonymous with punishment of any sort, except in the commitment of criminals. The only motive that should pervade the spirit and wording as well as the execution of a sterilization statute should be the eugenic one—the cutting off of degenerate lines of human descent.
2. The viewpoint as to the import of sterilization, whether it be held to be within police regulatory powers, or whether it be deemed of sufficient consequence to require in each case, due process of law.

In the opinion of the committee the greatest defect in the existing statutes is, that they consider sterilization of so little consequence to the individual and to the race that a person once duly committed to prison, or to an institution for the insane, the epileptic, or the feeble-minded is thereby made subject to sterilization on examination and selection by a non-judicial executive commission merely. The chances are that most persons thus selected would be cacogenic, but the fact of their commitment, tinder present methods, to such institutions is not per se sufficient evidence of their racial unworthiness. A sterilization law in order to be just should be based upon due process of law, in which the person nominated for sterilization shall in person, or by friend, and counsel be represented, and in which the burden of proof of unworthy heredity must be assumed by the state.

In concluding a vigorous article in the September, 1913, number of the “Journal of the American Institute of Criminal Law and Criminology,” Charles A. Boston, of the New York bar, says:

Our Bills of Rights are full of the concise expressions of the experience of political philosophers after viewing reflectively the mistakes of ardent enthusiasts of the past. These may not be the last words of political wisdom, but they are at least wise brakes.

Before advocating such laws, I would wish to be assured that . . . the safeguards of liberty are not to be thrown aside for a merely imaginary good; that they be preserved as far as possible and that crude legislation (and in my view it is all crude) be avoided. . . .

But now we are confronted with a new flood of laws, which leaves the personal liberty and a part of the life of the individual and posterity to the arbitrary judgment and guess, if not the mere whim and caprice, of possibly unskilled and unsympathetic judges, without any of the substantial safeguards, which we all regard as our greatest inheritance from the English Constitution and the founders of our own nation.

The statutes of the states of Connecticut, California, Iowa, North Dakota, Michigan, Oregon (revoked) and Wisconsin consider sterilization as a police or sanitary measure—not requiring due process of law. The revoked Oregon statute expressed its purpose by the phrase “for the peace, health and safety of the state.” The Oregon statute provided an easy method of appeal; the statutes of New York and New Jersey provide for quasi judicial procedure,
and for a hearing in court for certain cases and contingencies, while the Kansas statute requires that all nominations, by the executive agents, for sterilization, shall be reported to a court of competent jurisdiction, which court shall, after a hearing, determine the matter; this, in the opinion of the committee, more nearly than any other sterilization statute provides due process of law.

The situation, then, in reference to this feature of the existing statutes is this, all of the existing statutes, with the possible exception of the Kansas statute, have totally inadequate provisions for safeguarding the rights of the individual designated for sterilization; no hearing is provided; no easy method of appeal may be had by persons whose sterilization has been decided upon. An operation of such vital consequence to both the individual and the state should be safeguarded more amply than is possible by existing statutes. Every step in the sterilization procedure, with its accompanying responsibility and criteria for the next step, should be prescribed by statute, the experience of the existing laws demonstrating this necessity, not only in the interests of justice, but also in the interests of efficiency. Such a chain of processes need be neither long nor expensive. The preliminary investigations and designations should be made by a competent executive commission who should report their findings with a recommendation to the court of competent jurisdiction. The person selected for sterilization or his friends and counsel should have a hearing and the burden of proof of potential parenthood of defectives should rest with the state. If such proof is not produced to the satisfaction of the court, then the recommendations of the executive commission should be denied. If, however, such potential parenthood is demonstrated to the satisfaction of the court, then an operation for effective sterilization, in a safe and humane manner, should be ordered. If exception is taken to the decision of the court, an appeal with a suspension of the order should be provided for. Such a procedure would, in the opinion of the committee, provide for due process of law, and would overcome this objection to the existing statutes.

The limiting of the existing laws to the inmates of institutions does not, in the opinion of the committee, constitute class legislation in the legal sense of the term, and is therefore not objected to as a legal defect. And since such limitation does not involve social justice, it is not objected to on any grounds.
3. The executive agencies provided.

A law is no more effective than the adequacy of its executive machinery, and the competency and zeal of its executive agents. In states wherein the application of the law is optional, or wherein inadequate executive machinery—or none at all—has been provided, or wherein no appropriation for carrying out the provisions of the statute has been provided, the execution of the law depends almost entirely upon the zeal of the managing head of some institution, or of some private individual who succeeds in bestirring the duly appointed authorities into activity.

In the opinion of the committee an efficient executive body should consist of a commission appointed either directly by the governor, or in states wherein a State Board of Control manages all of the state institutions for the socially inadequate, by such board. The said commission should be directly responsible to the appointive powers, and should be composed of an expert each in psychology (or psychiatry), pathology, and biology—the three sciences directly concerned. They must be provided with funds commensurate with their tasks; this latter provision is so important that it is made the subject of a distinct topic—number 10, page 112.

There are many eugenical problems with which the state must ultimately cope. Besides the work of segregating and sterilizing degenerates, the issuing of marriage licenses and otherwise administering, in the light of eugenical knowledge, governing and limiting marriage selection, will have to be carried on by a commission, bureau, or office of the state, possibly at some future date—one subordinate branch having charge of the administration of the sterilization laws, and another of the marriage laws. Doctor Davenport says:

It is suggested that the Eugenics Commission might assume the duty of the Board to administer the state laws limiting marriage selection, such as relate to the marriage of defectives and diseased persons, consanguineous marriages, and miscegenation. As proposed in Bulletin Number Nine of the Eugenics Record Office, such a board should appoint a corps of state physicians, who shall examine applicants for marriage licenses, shall issue such licenses, and shall appoint eugenics field workers to examine family histories. In case the duty of the Eugenics Commission shall be extended to the administration of marriage laws, it is suggested that a general practitioner of law might be added to the commission or should replace the psychologist.
4. Persons subject to the law.

Most of the states provide that inmates of certain state and county institutions for the anti-social classes shall be liable to the provisions of the sterilization act. While theoretically it would be desirable to go into the whole population and to select the potential parents of defectives for eugenical sterilization, still in the present stage of advancement of the science of handling the anti-social classes, such radical procedure would not be practicable.

While commitment to our institutions is not *per se* sufficient evidence of the social unworthiness of an individual, still it sets such person apart from the general population and because of the fact that a majority of such persons belong to cacogenic strains, the state is amply justified in inaugurating investigation into the facts of the case—so much is a simple police right and duty, but the actual order for an operation should be given only as a result of a fair hearing before a court of competent jurisdiction.

Wisconsin, Iowa, and New Jersey provide for the extension of the law to the county institutions. The Michigan law limits the selection of individuals for sterilization to the inmates of “any institution for defectives maintained wholly or in part by public expense.”

It seems wise, then, for some time to come, to limit the activities of the executive commission in nominating persons for sterilization to individuals already committed to institutions for the socially unfit, and in addition to such limitations amply safeguard each selection. Indeed, thus limited as the field of selection is, it is sufficient for attaining the desired end.

No matter how inferior the hereditary qualities of an individual might be, there would be no object, under modern institutional management, in sterilizing for eugenical purposes an individual who is not to be released. It is sufficient therefore to provide for sterilization only in case the potential parent of defectives is about to be returned to society at large.

5. Procedure in selecting persons for sterilization.

None of the existing laws prescribes in detail a complete procedure in selecting persons for sterilization. The reason is, perhaps, that in these laws such selections are considered police measures and the procedure is left to the executive body of wide discretion. Thus
far the court procedures provided in the laws have been so ordered that great delay is their chief characteristic, and execution of the statutes is governed not by the mandates of the laws, but by the zeal of their executive agents. But if a sterilization law be based upon due process of law, it should, since it seeks to invoke a new agency, provide specifically for every step in both the preliminary activities of the executive commission, and in the court procedure—from the initiation of the study of the particular individual, until the operation is finally had, or until sterilization is decided against.

The law should require that the initiative in reference to family history studies be taken by the institution having the particular person in custody, and that such study should begin immediately upon receiving a person at the institution. Automatically, reports on the family history studies of these inmates should be made to the executive commission in ample time to allow for their examination, verification and extension by the commission, for the necessary court procedure, and for the operation and convalescence (if an operation should be decided upon) before the time set for release of the inmate. Moreover, the law should be so harmonious in design, and so well supported throughout that such procedure would move with all speed consistent with thoroughness and justice.


One of the most serious objections to present forms of these laws is that they either demand too meagre a body of facts—if any at all—concerning the persons proposed for sterilization, or that the facts demanded are not those most pertinent to the subject. The facts demanded should bear directly upon this one subject, and this one alone, namely, "Is so-and-so a potential parent of socially undesirable offspring?" There is only one method by which it can be pursued, and that is, to make first-hand investigation of these things:

1. Physical and mental condition.
2. Personal history and record.
3. Family history.

Connecticut and Wisconsin deserve special notice at this time, for they are about to attack their problems in the light of modern studies in human heredity. In Connecticut the new period of activity is due largely to the studies and zeal of Superintendent Pollock of
the Norwich State Hospital, who now has a trained field worker in eugenics on the hospital staff, and has inaugurated first-hand studies of the families of the individuals proposed for sterilization. Institution authorities, observing the patients or inmates week after week and even year after year, have much better opportunity, especially if they have field workers at their disposal, for determining the potential and family qualities of inmates than the committing court could possibly have. For this reason the law should provide that the first studies in family history shall be made by the institution having the particular inmate in custody, and subsequently such studies should be continued by the commission.

It is encouraging also to learn that the Wisconsin State Board of Control at its meeting on November 6, 1913, canvassed the situation, and applied through the Honorable Elmore T. Elver, Madison, to the Eugenics Record Office for a trained field worker to study family histories and to describe the innate traits of the various members of the family networks of the persons proposed for sterilization. This is a step in the right direction. Certainly sterilization should proceed no faster than the investigation of the innate traits and hereditary qualities of the persons proposed to sterilize.

The tables at the beginning of this chapter give an outline of the nature of the investigations demanded by each state. The New York statute provides, more clearly than any other, for the study of the “family history,” but thus far the New York statute is a dead letter. The Oregon law, recently revoked by referendum, also provided for the study “in a careful and thorough manner, and in accordance with the recognized rules of medical science.” Family history study is also expected by the laws of Connecticut, North Dakota and Michigan, North Dakota requiring family history study “as far as practicable;” and Connecticut and Michigan “as far as can be ascertained.” The Kansas statute expects the “history of the individual as far as can be ascertained to be secured.” One would infer that family history is meant by this statute, although one might also infer that the personal record of the individual was referred to.

The executive body should be required to present to the court the first-hand facts pertaining to these three subjects. The executive body should therefore have every opportunity and facility that the law can provide it with for securing these facts.
7. **Criteria for determining upon sterilization.**

The purpose of demanding an investigation of a specified character should be to secure data for determining the truth in reference to a given situation. When the facts are demonstrated the remaining procedure should follow according to the principles laid down in the law. There should be harmony between the nature of the required investigation and the criteria for sterilization; the former should be such as would result in securing adequate data for the latter. The criterion for determining upon the sterilization of a given individual within the classes liable should be his or her potentiality to produce inferior or anti-social offspring. All investigations should therefore be directed toward securing data bearing upon personal analysis and family history.

It should be definitely expressed in the law, that primarily the study of family history, and secondarily the personal history, and the thorough examination into the mental and physical conditions are the tests for determining hereditary qualities. The California statute is particularly loose in this particular, unless the expression “full particulars” should be made to include family history. The laws of Iowa, North Dakota, Michigan, and Kansas come more specifically to the point by making the criterion for determining upon a proposed sterilization, the liability of the person in question to produce defective offspring. The statutes of Indiana, Connecticut, Iowa, New Jersey, Michigan, Kansas, and Wisconsin use the expression, in reference to procreation, “deemed inadvisable.” This by itself, unsupported by a demand for the study of family history and a subsequent finding of likelihood of parenthood of defectives, is quite inadequate; it is little better than the provision “in the opinion” found in California and North Dakota statutes. The Indiana and Connecticut statutes seem defective in that they consider the task of the executive commission largely a matter of surgery rather than primarily a study in natural inheritance; secondarily, a matter of due process of law, and finally a humane surgical operation.

In Indiana, the first Iowa, the New Jersey, New York, North Dakota, Michigan, and Kansas statutes the expression “and there is no probability that the condition of such person so examined will improve to such an extent as to render procreation by any such person advisable,” or the equivalent in meaning, is found. Certainly all
the students of heredity will agree that this is a useless and impossible proposition. Hereditary traits are dependent upon ancestry, and do not rise and fall in value with the condition of the individual. If venereal disease is referred to by these expressions, and the measure is a therapeutical one, then such provisions would be admissible.

The California statute is based upon the therapeutic benefit to the person operated upon, but in the report of the commission in lunacy (1912) it is stated that “heredity was definitely traced in 119 cases out of the 268 operated upon—44%.” It doubtless existed in many more cases, and it should be incumbent upon the state to demonstrate hereditary unworthiness, either by the application of a general rule of heredity proven to be applicable to the particular case, or by first-hand field studies in family pedigree.

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 germplasm. In such cases such evidence of inferiority should be admitted by the commission and by the court. 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 the 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, or it may be that at some future time, the socially inadequate who are to be committed to institutions will be so thoroughly studied by the courts ordering the commitment that certain types and classes will, in accordance with some future discovered rules of heredity, be known to be carriers of defective heredity. If such should be the case an order for their sterilization at the termination of their custody might be made a part of the committing order; but at present, and doubtless for a long time to come, every case should be studied separately by the commission.

One of the principal eugenical benefits which may be expected to accrue from the present demand for thorough scientific investigation and due process of law in each case is that, on account of the thoroughness and justice of such methods, the time will be hastened when the commission will be authorized to extend its studies and nominations for sterilization to the general population.
In the Twenty-third Annual Report of the New York Commission in Lunacy (February 14, 1912), there appears the following table:

**FAMILY HISTORY OF FIRST ADMISSIONS.**

<table>
<thead>
<tr>
<th>Number</th>
<th>Per Cent. of Ascertained Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases with history of insanity</td>
<td>1,184</td>
</tr>
<tr>
<td>Cases with history of nervous diseases, alcoholism, etc.</td>
<td>981</td>
</tr>
<tr>
<td>Cases with no history of insanity, nervous diseases, etc.</td>
<td>2,116</td>
</tr>
<tr>
<td>Total ascertained cases</td>
<td>4,281</td>
</tr>
<tr>
<td>Family history unascertained</td>
<td>1,419</td>
</tr>
</tbody>
</table>

The usual case-history of the hospitals provides for a paragraph or so on heredity; and if such cursory examinations found heredity in 38 per cent. of the total first admissions, or in 50.6 per cent. of all cases cursorily inquired into, that a thorough field examination should reveal a higher percentage of heredity is very certain. Indeed one of the striking results of field study by the field workers of the Eugenics Record Office and other institutions is that in many cases the family networks of patients not known to be related are shown upon investigation to be closely interwoven; and that in many cases wherein a quality is denied in other members of the family it is found to be possessed by many of the kin. The problem consists not so much in indicating “heredity” as in studying the family traits of as many members as possible of the family network as carefully and as thoroughly as the physicians study the particular patient, and in arriving at an evaluation of the social worth of the possible descendants of such an individual. What sort of traits can he or she transmit in a given mating? What is their social value or menace? Undesirable findings to such queries should alone be the criteria for determining upon the sterilization of the unfit who are about to be returned to society at large.

8. **Types of surgical sterilizing operations authorized.**

The statute should, within certain special limits, prescribe the types of surgical operations permitted in legal and eugenical sterilization. The several laws vary in regard to this feature. The Michigan statute provides for that “surgical operation which is least dangerous to life, and will best accomplish the purpose.” Indiana and Wiscon-
sin provide for that operation which will be “safest and most effective.” Kansas and Connecticut provide simply for the operation in a “safe and humane manner.” While, quite extraordinarily, New Jersey and New York provide for the operation which would be “most effective,” the feature of safety and humanity being omitted. Doubtless the operations under this law would be executed as safely and humanely as modern institutions and hospitals could provide, but even the possibility of a perversion of the intention of the law in this respect should be provided against.

The provision for safety and humanity in the actual surgical operation should be found in every sterilization law, but beyond ordering with these limitations surgical operations for effective sterilization, it would appear wise in the model statute to instruct the court to leave the determination of the particular type of sterilizing operation with the commission whose experience should be relied upon to select the operation least dangerous or most beneficial to the individual. Operations designed to prevent procreation, except as authorized by law, are unlawful and punishable by fine and imprisonment in Iowa, Connecticut, New York, Michigan and Kansas. It seems, however, for the reasons stated in comment on section 7 in chapter VIII, unwise to include such a provision in a statute authorizing eugenic sterilization.

9. Operability, including the responsibility for and the mandatory element in each step.

Unless it be the failure to provide due process of law, the most serious objection—the fundamental one—is that for the most part the existing sterilization laws are dead letters. In no case, unless it be in California, has a governor—the sworn champion and executive of the law—taken any steps, aside from perfunctorily naming the commission, to insure the actual enforcement of the law as contemplated. Governor Marshall of Indiana “suspended” the law during his administration in that state. This particular criticism will, however, be confined to the intrinsic factors of operability; the extrinsic elements were discussed at length in chapter VI, of this study—“The Working out of Existing Laws.”

In general it must be said of the existing statutes that although they are on the statute books, they do not function as intended because they are in most part ill-designed and inharmonious. There
are too many weak links in the procedure provided, the breaking of any one of which will destroy the usefulness of the entire act. Where court procedure is provided it is not adapted to insure speedy justice. Nor do these laws provide for sufficiently thorough and just examination into the facts of each case; neither are they supported by adequate appropriations. They must be subjected to tests in the highest courts of their respective states, and in the light of legal test, practical application, scientific study, and moral considerations, all of them will have to be amended or recast if they are to accomplish valuable eugenic ends.

These statutes present a medley of mandatory and optional features in reference to the sequence of procedure in their execution. There should be logical sequence ordered by the statute, including the appointment of the commission, their activity, the procedure in designating persons for sterilization, and the actual performance of the operation in case such is decided upon. Regardless of whether a step be by law mandatory or optional, the laws have functioned about the same, in every case depending upon the zeal of executive agents. This latter fact alone should be sufficient to teach the states that in the future a sterilization law should make provision for insuring a zealous executive body. It would also seem essential that an operable law should provide specifically for a consecutive series of steps from the appointment of the executive agents and the initiation of their studies to the actual operation, or to a definite decision that such sterilization will not be had. The sequence should be reasonable and logical; in case a set condition is presented when one step is taken, it should be mandatory to take the next and so on to the termination of the case. Moreover a parallel chain of responsibility should accompany this series of steps. The existing laws invariably present missing links; the New York statute, for instance, which, aside from being clumsy, withstands a more generally consistent theoretical analysis than any of them except that of Kansas, is thus far a dead letter because of certain missing links, among them is the lack of responsibility by the executive body; it is sufficient that they spend their appropriation as they see fit.

In only one state is there a provision for penalizing delinquent and derelict officials. The Kansas statute provides for fine and imprisonment for neglect on the part of officials to make investigations as contemplated by law. The managing officers of the institutions
of the state subject to the act must comply with the provisions of the statute making investigation into the condition of inmates of institutions compulsory; or in dereliction they "shall be guilty of a misdemeanor and subject to a fine of not more than $100.00 or imprisonment in the county jail for not more than thirty days, or both." It will be interesting to see how this provision works out. This provision, however, seems to be unnecessary in states which are in the habit of enacting laws that an honest and competent governor will enforce as the will of the lawmaking body. It appears to the committee that the statute of the state governing incompetency and dereliction would be sufficient to cover such shortcomings. In case of executive incompetency, it would appear much better that the governor should remove the incompetents and replace them by better men, than that the state should attempt to insure impossible executive competency by fine and imprisonment. Nevertheless the lack of the mandatory element with its accompanying responsibility in reference to the activity of their executive agents is a serious handicap to the laws. It may be that in the absence of competent agencies for investigating each case, an injustice and oftentimes a social and eugenical injury would be wrought by the incorporation of such a feature. If, however, a law is to be eugenically of value, it must not only provide for a competent agency for making the preliminary studies and in managing the cases in court, but it must also be mandatory in providing for sterilization in certain cases established to be cacogenic. As stated elsewhere, the need of providing for membership on the executive body of a biologist acquainted with the modern studies in heredity, to cooperate with the medical experts is obvious, for the study of human heredity is primarily a biological science and its application is largely a matter of biological concern. Sterilization without irrefutable and scientific evidence that the person about to be operated upon is the possessor of a defective germ-plasm is not apt to be eugenical and it certainly would not be just.

To summarize this particular objection, the existing statutes lack harmony and cooperation in design.

10. Appropriations available.

Appropriations adequate to enable the state to employ capable men who shall devote their entire time and energy to the work con-
templated by law are uniformly lacking. A law is no better than its executive. An executive, howsoever competent, can do no more than its funds, wisely, honestly, and economically expended, will permit. Most of these laws have been dead letters because, among other handicapping influences, they were not supported by adequate funds. Even in the smallest of the several states the task of passing upon the hereditary qualities of inmates of state institutions is a large one, and can be properly done only by serious and capable men, devoting their entire energies to the task. However, in comparison to the future expense of caring for the offspring of present state wards, such expense would be trifling.

The Wisconsin statute provides for an appropriation available for the Board of Control in enforcing the sterilization law. While this initial appropriation is small ($2,000.00), it is a step in the right direction; it will enable the Board of Parole to inaugurate first hand field studies, and while the Wisconsin law provides for an examination into the mental and physical condition of the inmate, the Board of Parole of Wisconsin is about to undertake family history studies in connection with the examinations specifically ordered by the statute. This is in keeping with the provision of the Wisconsin statute, which requires the Board of Control's appointees to pass upon the advisability of the sterilization of the persons examined. This sum wisely spent will enable the Wisconsin executive body to secure data with which they will be able to demonstrate to the people of the state and to the legislature that by such field studies the state can locate its degenerate family strains.

The New York Commission had $5,000.00 at its disposal, but so far as can be ascertained no such valuable collecting of data is contemplated by it.

The New Jersey Commission with very limited funds has from its efforts secured for eugenical interests a valuable court decision.

Sterilization determined upon without sufficient facts would be grossly unjust; such facts can be secured only by expensive study; and so without funds the whole procedure, if it be just, must fail. In order to provide sufficient funds for the work of the commission, it would be necessary for the state to appropriate annually,—in part directly to the commission, and in part to the institutions,—a sum of money equal to one month's maintenance for each person to be discharged from state's custody during the year. Much good can
be accomplished with less money but the state cannot expect efficient work on a scale sufficiently broad to contemplate the cutting off of the lines of descent of the lowest tenth of our population for a less appropriation than this.

11. Summary: In ending these criticisms of the existing sterilization laws it seems proper again to call attention to the fact that these laws are pioneer efforts in a new field of social and biological endeavor. That the statutes do not function wherein they were mandatory does not lessen their value as experimental laws, nor does it demonstrate the falsity of the principle upon which they were established. A mandatory statute in order to function must be consistently designed throughout, it must be consonant with the facts of nature, with the fundamental law of the land, and with the enlightened ideals of justice and, if it requires special executive machinery in order to make it operative, such machinery besides being called into being must be supported by funds commensurate with the task before it.

Most of the existing statutes have some elements of virtue. The Kansas provision for court review is simple and direct, and amply protects the constitutional rights of the person selected for sterilization; moreover it seems adapted to insuring that there be no impediment in executing the law by referring each case to a court of justice. As much cannot be said of the procedure provided for in New York and New Jersey. The California statute, also, has a very commendable feature, namely, that all inmates of institutions must, "before their release or discharge therefrom," be subject to the scrutiny of the executive officers of the sterilization law. Michigan provides that the class subject to the selection of the executive commission are those "supported wholly or in part by public expense." In words, the New York law provides more clearly than any other for the study of "family history."

The law-making body of the state must follow a public sentiment demanding action, but, more than this, it should sometimes lead. A progressive legislature composed of leaders in the various lines of human endeavor will study the affairs of the state thoroughly and will enact laws which they deem necessary and proper for promoting the general welfare of the people. Legislation should keep pace with scientific advances, and the recent sterilization laws are an attempt to do this. For these reasons the twelve states that
have enacted sterilization laws are entitled to the thanks of the American people for courageously trying out this new and promising agency for racial betterment. The necessary preliminary experience has been secured, and, following the growth of public enlightenment in the matter of heredity and social conduct, the existing laws should be revised and strengthened—made to function properly—and the remaining states should, one by one, adopt just and humane statutes profiting by the experience of these twelve pioneer states.

A critical study of the scientific problems involved, and of the motive, the design, and the practical working out of these experimental laws, point toward their virtues and defects; the former are made use of, and the latter, so the committee believes, are overcome in the model statute presented and recommended in the next chapter of this study.

CHAPTER VIII.

MODEL LAW: INTRODUCTORY, PRINCIPLES TEXT, EXPLANATORY COMMENT.

In the light of the study of the several existing statutes legalizing sterilization, of such bills passed by the different legislatures but vetoed by their respective governors or revoked by referendum, and of bills still in various stages of legislative advancement; by an investigation of the actual working out of existing laws, by the careful study and due consideration of the practical eugenic problems involved, and through the presentation of court decisions and of the opinions of learned jurists, the committee has prepared the following outline of principles of a model sterilization law and the full text of such a statute, which we respectfully commend to the several states as probably efficacious in effecting the desired end.

The legal processes called for by the proposed statute are designed to insure a speedy and just hearing of each case proposed for sterilization, and the giving of the final order only as a result of due process of law and expert study, both of which the committee contends are prerequisites of the utmost importance in deciding a matter so vital in the individual and to society.

This model statute should be submitted to competent lawyers and administrators of institutions in each state proposing to enact such a law, in order to insure that in detail the proposed statute
conforms legally and in a practical working manner to the institutional, administrative, and court organizations and processes, and to the constitutional requirements of the particular state.

1. 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 inmate’s mental and physical conditions, 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 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.

2. MODEL STERILIZATION LAW.

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.

SEC. 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 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 Commission 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).

SEC. 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 of the state and county institu-
tions 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.

SEC. 4. The aforesaid court shall thereupon set a day for hearing the facts of the case, and shall immediately order that either the person 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 endorse the notification statement with a statement of the reasons why such notification was not served.

SEC. 6. 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 potential 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 (5) 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.

Sec. 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.

Sec. 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 expense 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.

Sec. 8. It shall be the duty of the managing heads of all the state and private institutions subject to the provisions of this act to cooperate 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 sixty (60) days before the date set for the release of each particular inmate.

Sec. 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 in such investigations.

Sec. 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).

Sec. 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.

3. EXPLANATORY COMMENT ON MODEL LAW.

The data recorded in chapter VI.—Working Out of Existing Laws,—and their interpretation in chapter VII.—Criticism of Exist-
LEGAL, LEGISLATIVE AND ADMINISTRATIVE ASPECTS OF STERILIZATION.

In some states the custom of introducing legislative acts by preambles is dying out. However, in the model law, it is thought proper to use this means to set forth in a concise manner the motive of the act, what it seeks to accomplish and the manner or attaining the desired end. Briefly stated, this sterilization law seeks to cut off the lines of descent of persons suffering from incurable hereditary defects. It proposes only to make this law applicable to persons maintained wholly or in part by public expense, thus making doubly sure that the process of sterilization would be applicable only within classes already duly set apart as socially inadequate. It may be argued that persons already duly committed to the custody of the state are subject to such regulations for their personal welfare and for social safety as the state may care to subject them to. In this model law, however, a different point of view is followed; and while eugenical sterilization is in no sense a punishment, just as commitment to a hospital for the insane is in no sense punitive, still sterilization is of such importance both to the individual and to the state that it is deemed wise and just to provide due process of law with the burden of proof of the social menace of possible offspring resting upon the state. It is pointed out that this law is based upon the already demonstrated facts of heredity as factors in social conduct and individual capacity.

SECTION 1. Some of the existing sterilization statutes provide their executive commissions with official designations, while others do not. Since the duties of such a body are continuous and extensive, it is thought proper to give the commission such an official designation. The membership of the commission is a much more important matter. Most of the existing statutes provide for physicians and surgeons only. This, in the opinion of the committee, is a mistake, inasmuch as the problems which the commission must deal with concern not only medicine but biology also. The problem of human heredity, no less than that of animal heredity, is a biological one. It is thought best to have represented on this commission persons possessing expert knowledge in the three sciences which primarily concern the types of persons which must be dealt with. The work of the commission is largely technical, and it involves a knowledge of the inheritance of natural traits, of diseased condition, and
of mental and physical qualities and conditions. There is therefore provided a commission consisting of a biologist, a psychologist (or psychiatrist), and a pathologist.

SEC. 2. The question may be raised as to the manner of appointment of an eugenics commission, but it seems preferable that responsibility should be centered in the chief executive of the state without the concurrence of any other body. In New York the Governor appoints the commission; in New Jersey the Governor must have the advice of the senate. In some states the whole problem of administering the affairs of the socially unfit is handled by a State Board of Control. It may be wise in such states to vest the appointment of the Eugenics Commission not in the hands of the Governor, but with the State Board of Control. In the first Iowa statute the Board of Parole in conjunction with the institution authorities were the executive agency. In the New Jersey statute the commissioner of the State Board of Charities is an ex-officio member of the body. Similarly, in North Dakota the secretary of the State Board of Health is ex-officio a member of the executive body. In Wisconsin the appointment of the executive forces and the enforcement of the law are vested in the State Board of Control. In that state it may be stated that the problem is being attacked in a manner which promises eugenical functioning. In states wherein such a board exists, on account of their especial interest in and knowledge of the problem, it may appear wise to place the appointment and direction of the Eugenics Commission in the hands of the State Board of Control.

A specific provision in reference to the activity of the body is only an extra insurance, but it seems wise in view of dereliction of appointees and executive commissions of several of the states. It seems proper also that the appointive power which is directly responsible for the efficiency of the commission should have the right, at its pleasure, to remove members of the commission.

Some of the laws have been dead letters,—so very “dead” that not even have the required appointments been made. It seems that the statute should require not only the immediate appointment of the eugenical commission, but should provide for its immediate organization and for an early initiation of its duties as contemplated.

The duties of the board are arduous, technical, and extensive. No person, howsoever learned or competent he may be, can per-
form the duties required of a state eugenics commission, if such person does not give his entire time and attention to his duties as a member of such commission; and for their services, therefore, such men should be fairly compensated from state funds not otherwise appropriated. Some of the existing laws are defective in that they require certain compensation to the executive commission to be paid from the maintenance funds of the institution served. Institutions are always jealous of their appropriations from the state, and the policy seems a bad one. In the interests of efficiency, the commission should be paid from funds appropriated directly by the legislature.

One of the principal reasons why officials appointed to enforce the existing sterilization laws have been negligent or derelict is because funds were not provided for salaries and for their other legitimate expenses for carrying out the provision of the statutes. A duty so important to the state and so technical and arduous, should be imposed upon only such persons as the state is willing to compensate fairly. The principle of adequate compensation should be incorporated in the sterilization law itself; and provision for the payment of the commission and for other expenses in executing the law should be provided for in the annual budget of the state. A sterilization law, although just and well designed, is, without an adequate supporting appropriation, destined to be a dead letter. It is the experience of the Eugenics Record Office that on the average the cost of field investigation into the family history of a person in a state institution amounts to practically the same sum as one month’s maintenance of such an inmate. This varies in the different states from $15 to $50 for different types of inmates. If the sterilization statute, therefore, requires a thorough study of the family traits of the persons nominated for sterilization, then for such study an appropriation equal to one month’s maintenance for all persons to be discharged from the state’s custody during the year should be provided.

The following items of distribution of money appropriated for the work demanded of a eugenics commission seems proper to the needs of such a body:

State of ........................

Appropriation for the Eugenics Commission for the year ending ........
There is hereby appropriated from the general fund of the state for the maintenance of the Eugenics Commission and in the performance of their duties as contemplated by law (Ref. to statute), for the year ending ....... the sum of $.... which shall be available as follows:

Salaries of commission—
  Chairman $........
  Other two members $........ each.
In addition to such salaries, the actual traveling expenses not exceeding $........ per annum for the entire commission, incurred while actually engaged in the business of the commission, as contemplated by law, shall be allowed.
For rental for office quarters (if ample accommodations for such cannot be provided in state owned buildings), printing, office supplies and clerical hire $........
For field studies into the family histories of persons proposed for sterilization $........

Money honestly spent in such work must be considered as a good investment by the state,—not only from the standpoint of racial welfare, but in dollars and cents,—for a family history can be studied and (if degeneracy be found) due process of law ordering the operation can be had and the operation, itself, performed altogether at a total expense of not greater than one month’s maintenance of the subject of the study in the state institution. But weighed further in the balance of dollars and cents the great fact is, that the sterilization of such persons insures the state against having perpetually to care for his or her equally unfit descendants, to say nothing of the economic drag which such individuals entail upon a community. The financial aspect,—i. e., the relation of present cost to future immunity from expense,—if social and racial consideration demand the elimination of hereditary defects, should not cause concern. The state should consider the necessary expense of such a policy as it now considers the cost of public education, namely, as a long time but sound financial investment.

SEC. 3. Field studies in human heredity have so advanced that now trained field workers by going into the home territories of certain socially inadequate persons are enabled to secure data upon the analysis of which, students of eugenics are in a measure enabled to
estimate the hereditary potentialities of given individuals. By the model law it is incumbent upon the state to prove potential parenthood of defectives before demanding sterilization, and in most cases such proof can be secured only by first hand field study.

The classes subject to the provisions of this act are those which are not susceptible to eugenical education and moral training, sufficient to cause them voluntarily, from sense of social duty, to refrain from having offspring in the interest of national welfare and vigor. The crippled, the blind, the deaf, and the tubercular are thus not subject to the provisions of this act, because, unlike the classes enumerated in the statute, they are capable of education, and consequently eugenic training rather than enforced sterilization, should apply to them.

A very large percentage of the inmates of the state institutions for the defective are maintained by state expense. Thus on September 30, 1911, in the hospitals for the insane in New York State of the 32,250 inmates 92 per cent. were maintained by the state, 7.25 per cent. were barely self-supporting, while only .75 per cent. were ranked as private patients; and in the licensed private institutions for the insane there were only 1,061 patients. The Michigan statute provides for the application of the sterilization law to persons “adjudged insane or mentally deficient,” “maintained wholly or in part by public expense.” By limiting the compulsory application of the law to persons duly committed to institutions, and maintained at public expense, and by requiring within this group a thorough mental and physical examination and a careful inquiry into the family history of each particular person subject to the act, a minimum number of errors would be made in enforcing the law. While this committee takes the view that the giving of a final order for an operation of sterilization is far too important a matter to fall within the province of police routine, and should therefore be ordered only as a result of due process of law, still the original investigation, preparatory to a judicial hearing before a court of competent jurisdiction is deemed fully within the province of a non-judicial executive commission.

Pending the growth of an eugenic sentiment in America, it is deemed best to limit the selections for sterilization to the inmates of the state institutions for the socially inadequate. After a few years—possibly so few as ten—of experience with a law such as this
model proposes, it would be safe to extend the application of the law to the whole population. Such an extension would require only a simple amendment to the present proposed statute, for thorough investigation and due process of law would already have been provided. If, however, the existing and the proposed model laws which are limited in this application to the inmates of institutions, should be held by the courts to be “class legislation,” such an amendment of extension should be included immediately, in order not to destroy the whole policy of eugenical sterilization.

Since it is proposed to sterilize only potential parents of defectives who are to be returned to society at large, the commission could arrange its work so as to study the hereditary qualities of the persons subject to this act in order of their proposed dates of release from state’s custody.

It is obviously impossible in a model statute to name the court which should have jurisdiction in these cases, other than that it should be a state court of record; which court should be specified in the particular statute.

Thirty days are deemed the minimum time required for legal process and the operation provided for by the statute.

SEC. 4. This model statute is designed to insure due process of law in ordering sterilization. It gives to the person nominated for sterilization ample opportunity to be heard by friend and counsel by the court. This particular section is designed to hasten the court procedure and to insure biological and social justice in each case.

SEC. 5. It is deemed proper in this statute to prescribe in detail the procedure from the inauguration of the investigation to the actual operation, in case potential parenthood of defectives is found and an operation is duly ordered; or to the decision that such potential parenthood does not exist in the particular case. The process is simple, direct, and speedy.

By this section it is incumbent upon the Eugenics Commission to present to the court the facts discovered as a result both of their examination of the individual and of their study of his or her family history. Furthermore, it is incumbent upon the state to prove social menace in the potential parenthood of the individual before an operation can be ordered. The provision that the court shall, in case of potential parenthood of defectives be demonstrated, order an operation for sterilization, seems wise, as the court should be concerned
in judging the accuracy and fairness or the commission’s recommendation, and not of the wisdom of sterilization as an eugenical measure.

The chain of mandatory features called for by this section, each one dependent upon facts, seems essential in order to make the statute operable. The provisions of safety and humanity are matters, of course, to be vouchsafed by the state. The period of five days intervening between the order and the operation is provided in order to allow ample time for an appeal to be made from the decision of the court. The actual performance of the operation should be a part of the surgical and medical duties of the institution having the particular patient in charge. The matter of compensation of the surgeon should be a matter of administrative detail, and should not be charged to the appropriation for the eugenics commission; nor does it seem necessary to provide a special fund for these charges.

If the process required by this act can be shortened and simplified and still be consistent with justice, and with the fundamental law of the state, such simplification should be had.

The statute seems fair, inasmuch as only potential parents of defectives when about to be released to their own resources are to be sterilized. This is the greatest concession that an efficacious eugenics policy can make to sentiment; eugenics is in perfect accord with the highest humanitarianism—there is no conflict here. If objection be made to sterilization in such cases, then let those who by preventing sterilization in such cases would contaminate the racial quality of the nation, provide for the continued segregation of such cases, under the state’s custody; in such cases, the law as outlined would thereupon by its own provisions not be applicable. As it stands the law is simply complementary to the eugenical segregation of the breeding stock of the socially inadequate traits.

Sec. 6. In a matter of such importance to the individual and to the state, an easy method of appeal should be provided for both the attorneys for the commission and those for the person nominated for sterilization. This section is designed to bring this about in a just and speedy manner.

It seems absolutely essential to provide that in case of an appeal, the subject of the particular order shall remain in custody of the state; otherwise the impeding of the legal process until after the discharge of the person from the state’s custody might be re-
sorted to in order to evade the enforcement of the act. If the sterilizing operation be vasectomy, it is not at all serious; but if it be castration in the case of males, or any operation in the case of females, it is essential that ample time for convalescence under the hospital care of the state should be allowed. Indeed, there seems to be no danger, as has been suggested, that a person sterilized under the proposed act would not be given ample time for recovery before being discharged. The same rules that govern medical care in relation to discharge from state institutions should, and doubtless would, prevail in cases of sterilization.

SEC. 7. It seems to be undesirable at the present time that there should be inserted in the proposed law, a prohibition regarding the performance of any sterilization operation except as authorized by this particular statute. The statutes of the state concerning criminal surgical operations should provide for any abuse that might accompany the growth of eugenic sterilization. Indeed, in many cases by the consent of, if not at the initiation of, the families of certain defectives, sterilizing operations which certainly resulted in eugenic good have been brought about. The Iowa and the California laws provide for sterilization by the state not only of certain persons in institutions, but also of others not so held in custody, upon their voluntary application. Thus eugenic sterilization by private physicians, in accordance with medical ethics, seems a desirable thing. Nor does it seem wise to provide in this statute for the punishment of officers derelict in enforcing this act, such as the Kansas law provides. Law enforcement in such cases is secured not so much by the punishment of incompetents, as by their removal by vigorous and honest governors and in replacing them by better men.

It does not seem necessary that the actual operation be performed by a member of the commission, in fact, as stated elsewhere, such operations seem most logically to be one of the duties of the surgical staff of the institution wherein the particular person is held in custody. Some of the states err in making the whole subject primarily a surgical task, rather than primarily one of eugenic investigation and only in routine one of surgery.

The state owes it to the individual operated upon that the operation be skillfully and humanely performed; and liability for any such operation performed in accordance with the statute should
not rest upon the surgeon performing the same; such surgeons are simply agents of the state.

SEC. 8. As the institutions for the socially inadequate classes develop in efficiency, they are gradually beginning the study of the family qualities of the inmates committed to their care. The state must encourage any such studies on a state-wide plan, if it hopes to secure the data essential to cutting off its supply of defectives. Such studies require funds since, in eugenics as in all other branches of endeavor, facts cost money. The work has already begun in many places (see Report No. 1, Eugenics Record Office). The accompanying items in the appropriation bills of Minnesota and New Jersey illustrate how the states have inaugurated these studies:

I. Minnesota School for Feeble-Minded and Colony for Epileptics, Faribault, Minnesota.
   "Our appropriation for research work was simply an item in the general appropriation bill worded as follows:
   'Clinical and scientific work for hospitals for insane, School for Feeble-Minded and penal institutions. Available for year ending July 31st, 1912—$5,000.00.'"
   (signed) A. C. ROGERS, Supt.

II. The New Jersey State Hospital at Morris Plains, Greystone Park, New Jersey.
   "I have your recent communication relating to legislative provisions made for field workers in eugenics.
   "With relation to this institution a supplemental appropriation bill was passed by the New Jersey legislature of 1912, in which was included the following items:
   'For research work, twenty-five hundred dollars.'
   "The above, of course, relates only to legislation affecting this hospital with regard to eugenics research work."
   (signed) B. D. EVANS, Medical Director.

Those instances wherein small sums of money have been appropriated for field studies in eugenics have, in proportion to their amounts, brought in the most valuable returns. Such appropriations should, and doubtless will, be extended in accordance with their real value to the state. The appropriation for the Eugenics Commission and that for the several state institutions to enable them to supply the required facts to the commission should not be con-
fused; the former should be provided as outlined in the comment on section 2 of this chapter; the latter should be provided for in the supply bills for the various institutions for the socially inadequate. Most of such institutions which have thus far carried on these family history studies have been enabled to do so only by dint of great economy on the part of their respective administrators. The state should provide directly for such work. With such support by the state it should be incumbent upon the heads of institutions to cooperate in every way possible with the Eugenics Commission in the execution of their duty; the provisions of this statute are designed to secure such co-operation without jealousy or friction. In so huge a task as the Eugenics Commission has before it, it is absolutely essential that the institutions inaugurate a family history study of their respective charges immediately after the admission of each such person to the institution, in order that data for the commission study may be had at the time contemplated by law, namely, at least sixty days before the date set for the release of the particular inmate. Indeed such data should be supplied as early as possible in order to provide for due deliberation and study on the part of the commission; sixty days, however, should be the minimum.

The very fact that it is incumbent upon the managing head of the institution to furnish data at least sixty days before the date set for the discharge of the particular patient, prisoner or inmate would appear to exempt persons committed for a less period of time from the provisions of this act. This seems quite proper, for such a short period of time would not permit the investigation contemplated by law unless the particular person happened to be a member of the family network of some family already studied. Even so, under an advancing system of commitment of defectives and inadequates to institutions, such persons would doubtless before long be committed to longer term in some state institution. For the year ending September 30, 1912, there had been admitted to the city and district prisons of New York State 103,267 persons—82,764 men and 20,503 women. Should it be proven later on that such persons constitute an hereditary social menace, and that a great portion of them do not, before well advanced in their reproductive periods, come under the custody of the state for periods greater than sixty days, some special provision should be made for them.
SEC. 9. While most of the data for the study of the commission would be provided by the heads of the institutions holding in custody the respective subjects of the investigation, still the commission must extend and verify these family history studies to their own satisfaction, and every possible opportunity should be provided for such work. The commission should therefore be provided with funds (see comment on section 2) for such studies, and should in the interest of truth and justice have the right to summon persons and to administer oaths and to have free access to all court and institution records likely to be of service in such investigations.

SEC. 10. Complete and permanent records of all business and scientific transactions by the commission should be kept not only because such are essential to business economy and to justice, but also because in any far-reaching plan for cutting off the supply of defectives it is necessary that the state build up as rapidly as possible an inventory of its human stock. The existing records of state institutions in general and of sterilized persons in particular are very inadequate to such needs. It therefore seems proper that the Eugenics Commission, which would be a permanent body with permanent files and quarters, be required to preserve all documents likely to be of any service in studying the defective hereditary traits of the state. The commission should also be required to make an annual report—to render an accounting as it were—to the state in general and to the appointive power directly. The lack of such provisions in the existing laws is one of a series of serious handicaps to their value.

SEC. 11. A commission entrusted with such responsibility as that by the proposed statute will find it necessary to study from a scientific viewpoint the cases and family histories that come to its attention; in the interest of a more efficient future administration of the law, such studies should be encouraged.

The provisions that the records of the commission shall not be opened for public inspection, except on an order made by a judge of a court of record, seems highly desirable in order to protect from unnecessary embarrassment and shame the families studied.

The passage of the model law recommended in this chapter, if supported by ample appropriation, and vigorously and competently enforced, will, the committee is confident, inaugurate in any state so undertaking it an eugenical program which, if consistently fol-
allowed and supported by all of the remaining states, will in two
generations practically cut off the inheritance lines and consequently
the further supply of that portion of the human stock now measured
by the lowest and most degenerate one-tenth of the total population.
This portion of the American breeding stock now constitutes a
growing menace to the conservation of our best blood, and conse-
quently to the very foundations of our social welfare. Only those
nations of history which have arisen to great effort to achieve a
worthy end have long enjoyed a high plane of culture or have left
contributions of worth to subsequent peoples. The purging of de-
fective traits from the blood of the American people is worthy of
our best efforts.

CHAPTER IX.

CALCULATIONS ON THE WORKING OUT OF THE
PROPOSED PROGRAM.

1. TABLE SHOWING THE RATE OF WORKING OUT OF
THE PROGRAM.

In the model law of the previous chapter sterilization is de-
signed as an eugenical agency complementary to the segregation of
the socially unfit classes and to the control of the immigration of
those who carry defective germ-plasm. It is at once evident that, un-
less this complementary agency is made nation-wide in its applica-
tion, and is consistently followed by most of the states, it cannot
greatly reduce, with the ultimate end of practically cutting off, the
great mass of defectiveness now endangering the conservation of our
best human stock, and consequently menacing our national efficiency
and happiness. The accompanying calculations have been carefully
made and, the committee feels, are a fair measure of the number and
extent of sterilizing operations necessary for accomplishing the de-
sired end. See chart: Rate of Efficiency of the Segregation and
Sterilization Program proposed by the Committee.

2. EXPLANATION AND SUBSTANTIATION OF
CALCULATIONS.

From the accompanying chart it is seen that the rate of ef-
ciciency of the proposed program is dependent primarily upon the
length of time required to send to state institutions, regardless of
RATE OF EFFICIENCY OF THE SEgregation AND STERILIZATION PROGRAM PROPOSED BY THE COMMITTEE

EFFECTIVENESS OF THE PROGRAM DEPENDS UPON—

1. The length of time required to send to State institutions—regardless of length of commitments—all of the breeding stock of the varieties sought to eliminate.
2. The sterilization upon release from State custody of all individuals of such varieties possessing reproductive potentialities.

The following table shows the reasonable expectation of the approximate working out of this program—if consistently followed—for eliminating the defective and anti-social varieties from the American population, under the following specific conditions—:

1. That the varieties (i.e., the breeding stock of defectives, including both affected and unattended individuals of all ages) sought to exterminate constitutes 10% of the total population.
2. That those portions of the defective varieties permitted to reproduce, increase at a rate equal to that of the general population, plus 5% each half decade.
3. That the gross of State institutions for the socially inadequate, whose inmates by actual count constituted in 1890, 300, 1900, 400%, and in 1910, 914% of the total population, provide for and receive inmates at a rate equal to that of the increase of the general population, plus 5%, each half decade.
4. That the inmates of institutions continue to be drawn from the two sexes and from each age group in even proportions to the total numbers of the general population.
5. That the average "institution generation" (i.e., average period of commitment) be 5 years.
6. That the Federal Government co-operate with the States to the extent of prohibiting the landing of foreigners of potential parenthood of innate traits lower than the lowest of the better 90% of the blood already established here, i.e., belonging to the varieties of the lower 10% sought to be cut off.

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<thead>
<tr>
<th>TABLE I</th>
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<tr>
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<tr>
<td>Population (in millions)</td>
</tr>
<tr>
<td>Population increase in millions</td>
</tr>
</tbody>
</table>

How Calculated—Rank 1, Dates. Rank 2, Per cent. at previous date, plus 5% of such per cent., minus institution population for period. Rank 3, Per cent. at previous period plus 5% of such per cent. Rank 4, Estimated by W. J. McGee in 1911. Rank 5, Item of Rank 4, times that of Rank 4. Rank 6, Items of Rank 3, times that of Rank 4. Rank 7, Based upon the sterilization of one-half of the total number of persons committed to institutions, the other half being either (a) post the reproductive age, individuals of the corresponding sex and age group in the total population of the varieties sought to eliminate.

<table>
<thead>
<tr>
<th>TABLE II (BASED ON TABLE I)</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>Population (in millions)</td>
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<tr>
<td>Population increase in millions</td>
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<th>TABLE III (BASED ON TABLE I)</th>
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<tr>
<td></td>
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<tr>
<td>Population (in millions)</td>
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<td>Population increase in millions</td>
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<tr>
<th>TABLE IV (BASED ON TABLE I)</th>
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<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Population (in millions)</td>
</tr>
<tr>
<td>Population increase in millions</td>
</tr>
</tbody>
</table>

Note—The estimate for population increased (Rank 4) does not take into consideration the effects of the proposed segregation and sterilization program herewith outlined, the extent of which would be to decrease the total somewhat. Estimating future population is at best an uncertainty. The calculations involved in this table are based upon percentages, and the program will work out the same whether the population increases rapidly or slowly. However, following McGee's estimate, which is median between the extremes recently made by demographers, it is probable that during the interval between the present and 1915 between 250,000,000 and 400,000,000 persons will be born in the United States; should such be the case and should our institutions follow their present trend of development, approximately 30,000,000 of these persons will come under custodial care of the several States. Under the present estimate it would be necessary to sterilize during this period approximately 15,000,000 persons—beginning with 95,400 per year in 1810 and increasing to 415,000 per year by 1910.
length of commitment periods, the potential parents of the varieties sought to eliminate. The following factors determine this period of time:

a. The portion of the population which it is sought to cut off.

The extirpation of hereditary defectiveness under the proposed program is dependent upon the growth, development and use of our institutions for the socially inadequate. In these calculations it is assumed that the lowest ten per cent. of the human stock are so meagrely endowed by nature that their perpetuation would constitute a social menace. The manner of arriving at this estimate is described in the introduction of Part I of these studies. Briefly it is as follows:

In 1910 .914 per cent. of our total population were inmates of the institutions for the socially inadequate. Their average period of custody or commitment was less than five years (see table VI.); then, after allowing for the cases of multiple commitments (see table VIII.), the total number of living persons who have been legally committed to institutions must be represented by several times this per cent. Besides this portion of the total population, there is another portion who are equipped with equally meagre natural endowments, but who have never been committed to institutions. In addition to this body of persons, there is another group of persons who, though themselves normal, constitute a breeding stock which continually produces defectives; they are so interwoven in kinship with the lower levels that they are totally unfitted for parenthood. The assumed ten per cent., or to use a current expression, “the submerged tenth,” appears for the purpose of this study to be a fair estimate of the extent of the body of degeneracy which the American people can now, in the interests of social betterment, well seek to cut off. The primary or basal factor namely, the commitment of all of the members of the socially inadequate strains to institutions is in turn dependent upon several component factors, the first of which is the differential birth rate of the submerged tenth compared with that of the normal and super-normal ninetenths.

b. Differential Birth Rate.

In these calculations the lowest tenth are given a birth rate greater by five per cent. each half decade than that of the general
population. This factor is included in these calculations in deference to prevailing opinion, that, generally, defective and inferior human stock reproduce more rapidly than our better strains. The following table shows the result of a preliminary study of this field:

**TABLE V**

**Fecundity and Infant Mortality Differential Between Normal and Sub-Normal Families**

<table>
<thead>
<tr>
<th></th>
<th>Normal Families</th>
<th>Sub-Normal Families</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of matings</td>
<td>701</td>
<td>1,054</td>
</tr>
<tr>
<td>Total number of children</td>
<td>3,227</td>
<td>4,640</td>
</tr>
<tr>
<td>Average number of children per family</td>
<td>4.6</td>
<td>4.4</td>
</tr>
<tr>
<td>Infant mortality—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>131</td>
<td>463</td>
</tr>
<tr>
<td>Female</td>
<td>109</td>
<td>237</td>
</tr>
<tr>
<td>Sex unknown</td>
<td>27</td>
<td>106</td>
</tr>
<tr>
<td>Total</td>
<td>267</td>
<td>806</td>
</tr>
<tr>
<td>Percentage Infant Mortality</td>
<td>8.3</td>
<td>17.4</td>
</tr>
</tbody>
</table>

The normal families recorded on this table are those of American professional and business men; the sub-normal families are each represented by one or more members in one or more institutions for the insane, epileptic, feeble-minded, or criminalistic classes. Although the numbers are small, the families were selected in serial order, without regard to fecundity. While not conclusive, this special study points toward a small differential fecundity in favor of the normal families over defectives, rather than the reverse as is generally held. Incidentally, there is a more definite differential infant mortality, working by natural process to reduce the defective population. The estimate then of the differential fecundity of 5 per cent., each half decade, for the “submerged tenth” seems certainly to cover the actual rate of increase of this class. It is clear that such an estimate tends, in these calculations, to delay the consumption sought by the program; the object of estimating so great a fecundity of defectives is to insure conservatism in the calculations. However, further investigation based upon first-hand materials, is needed to determine the facts of differential fecundity.
c. Future Growth of Institutions for the Socially Inadequate.

These calculations provide that there shall be an increase in the capacity of state institutions for the anti-social classes, not only absolutely but also in relation to the increasing total population. The rate of increase used in the calculations is equal to that of the total population plus 5 per cent. each half decade. This is approximately one-third the rate of increase for the decade 1890-1900, and three-fourths the increase for the decade 1900-1910. This proportion is based upon the fact that in 1890, .590 per cent.; in 1900, .807 per cent., and in 1910 .914 per cent. of our total population were in institutions. This is an increase of 37 per cent. per 100,000 population for the decade 1890-1900, and 13 per cent. for the decade 1900-1910.

That there is clearly a movement toward increasing, both absolutely and relative to the total population, the facilities for caring for such classes, is seen by the data just given. The increase for the last decade is not so great relatively as that of the preceding decade; but the increase is still differential in respect to the growth of population. Accompanying this numerical growth there is a refinement of social ideals, and legal processes governing the commitment of the anti-social to state institutions; as well as a better understanding of the cause and nature of their shortcomings.

d. Sex and Age of Persons Committed to State Custody.

Another determining factor in these calculations is the sex and average age of persons committed to state custody. The correctness of these calculations in measuring the possibility of achieving the desired end is dependent upon the selection of individuals for commitment to institutions, from all ages and from both sexes, in proportion to the total numbers of each age and sex in the general population. Should the commitment to institutions be deferred until after the reproductive period, then the segregation and sterilization program would be useless as an agency for reducing the anti-social strains. If, however, the commitment is made early in or before the reproductive period, then the recommended program will function as intended.

The report of the State Commission of Prisons for New York for 1912 shows that for the year ending September 30, 1912, the maximum number of commitments to the state prisons was reached
in the age group of 24 years. For the year ending September 30, 1911, the report of the New York State Commission in Lunacy shows that for the insane the maximum number of commitments of native-born persons, to the State Hospitals was reached at the age group 35-39 years. This group represented 11.7 per cent. of the total native-born first admissions, while at ages younger than this, were represented by 39.6 per cent. of the total of such admissions. For the foreign-born the same maximum was reached in the age group 25-29 years, with 15.2 per cent. of the total of such admissions during earlier years.

In response to a special inquiry sent out by the committee in the spring of 1913, data were secured from which the following table has been compiled:

<table>
<thead>
<tr>
<th>TYPE OF INSTITUTION</th>
<th>NUMBER OF INSTITUTIONS REPORTING</th>
<th>AVERAGE AGE OF PERSONS COMMITTED IN 1912</th>
<th>AVERAGE AGE OF PERSONS DISCHARGED IN 1912</th>
<th>AVERAGE LENGTH OF COMMITMENT OF PERSONS DISCHARGED IN 1912</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospitals for the Insane</td>
<td>55</td>
<td>34.70 years</td>
<td>38.30 years</td>
<td>5.33 years</td>
</tr>
<tr>
<td>Reformitories and Industrial Homes</td>
<td>24</td>
<td>16.88 years</td>
<td>19.32 years</td>
<td>2.39 years</td>
</tr>
<tr>
<td>Prisons and Penitentaries</td>
<td>8</td>
<td>32.21 years</td>
<td>32.28 years</td>
<td>2.64 years</td>
</tr>
<tr>
<td>Institutions for the Blind</td>
<td>8</td>
<td>11.40 years</td>
<td>18.17 years</td>
<td>9.00 years</td>
</tr>
<tr>
<td>Institutions for the Deaf</td>
<td>8</td>
<td>8.87 years</td>
<td>17.02 years</td>
<td>9.20 years</td>
</tr>
<tr>
<td>Institutions for Epileptics</td>
<td>5</td>
<td>24.85 years</td>
<td>29.23 years</td>
<td>2.19 years</td>
</tr>
<tr>
<td>Institutions for the Feebleminded</td>
<td>17</td>
<td>17.98 years</td>
<td>20.54 years</td>
<td>4.74 years</td>
</tr>
<tr>
<td>Institutions for the Feebleminded and Epileptic</td>
<td>5</td>
<td>16.92 years</td>
<td>20.27 years</td>
<td>5.13 years</td>
</tr>
</tbody>
</table>

In the report of the State Commission in Lunacy for California, June 30, 1912, Dr. F. W. Hatch, the General Superintendent of State Hospitals, reports the ages of persons operated upon, as follows:
TABLE VII
PERSONS STERILIZED UNDER THE CALIFORNIA STATUTE

<table>
<thead>
<tr>
<th>Ages of Those Operated Upon</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 10 years</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>15 to 19 years</td>
<td>24</td>
<td>15</td>
<td>39</td>
</tr>
<tr>
<td>20 to 24 years</td>
<td>33</td>
<td>28</td>
<td>61</td>
</tr>
<tr>
<td>25 to 29 years</td>
<td>33</td>
<td>28</td>
<td>61</td>
</tr>
<tr>
<td>30 to 34 years</td>
<td>17</td>
<td>28</td>
<td>45</td>
</tr>
<tr>
<td>35 to 39 years</td>
<td>22</td>
<td>12</td>
<td>34</td>
</tr>
<tr>
<td>40 to 44 years</td>
<td>9</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>45 to 49 years</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>50 to 54 years</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>55 to 60 years</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Unknown</td>
<td>144</td>
<td>6</td>
<td>256</td>
</tr>
<tr>
<td>Totals</td>
<td>150</td>
<td>118</td>
<td>268</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Civil Condition</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>105</td>
<td>46</td>
<td>151</td>
</tr>
<tr>
<td>Married</td>
<td>21</td>
<td>61</td>
<td>82</td>
</tr>
<tr>
<td>Divorced or widowed</td>
<td>5</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>Unknown</td>
<td>19</td>
<td>5</td>
<td>24</td>
</tr>
<tr>
<td>Totals</td>
<td>150</td>
<td>118</td>
<td>268</td>
</tr>
</tbody>
</table>

From table VI it is apparent that at present the socially inadequate are being committed to institutions at an age early in their reproductive periods; early enough, it is clear, to forestall the birth of a large percentage of the offspring who would normally be born to these persons, and from table VII it is equally clear that in practice the California operations have, as a rule, been had early enough to be in a large measure eugenically effective, if the persons operated upon carried defective qualities; but, even here it is evident that the age limit must be lowered, if the greatest eugenical good is to accrue from such measures. The civil condition is not
so important, for among the anti-social classes illegitimacy runs high. If the future tendency should be toward earlier commitments—and it is apparent that such is the case—then the cutting off process would be hastened.

The sex of the persons sterilized is an important eugenical factor, for it is evident that with the lower strains of humanity, among whom illegitimacy is high, it will be necessary to sterilize degenerate women in numbers in fair proportion to the number of males sterilized. This fact has its biological analogy as follows:

In the breeding of the higher and more valuable types of domestic animals, such as horses and cattle, sterilization of surplus males is one custom universally practiced. The females of these animals are well cared for and protected from free union with the males; here selected matings are the rule. However, in the case of domestic animals of less value, having mongrel and homeless strains and individuals, such as the dog and the cat, the cutting off of their supply is largely effected through the destruction or the unsexing of the females. As a rule the tax on a female dog is two or three times greater than that on a male dog; such difference in taxation is not made because of a difference in individual menace, but rather because of a more direct responsibility for reproduction. The females of such homeless strains are not protected, and consequently they increase very rapidly; consorting freely with equally worthless mates, their progeny are often excessive in numbers, and of a worthless, mongrel sort. The castration of one-half of the mongrel male dogs would not effect a substantial reduction in the number of mongrel pups born.

The unprotected females of the socially unfit classes bear, in human society, a place comparable to that of the females of mongrel strains of domestic animals. As a case in point, the accompanying pedigree from “A First Study of Inheritance in Epilepsy” by Davenport and Weeks, illustrates the manner of the increase of defective children by defective women. This actual family record is an example of the type of pedigree which was so common in the family histories studied by Davenport and Weeks, that they gave it a name,—“the almshouse type,”—a sad commentary on the general inefficiency of such institutions.
The central figure is a feeble-minded woman subject to epileptic fits, descended from a feeble-minded mother and shiftless, worthless father. She has spent most of her life in the almshouse, and all of her children have been inmates. One is by a negro, whom she met in the almshouse. Two of the children died in infancy; one, of whom little is known, died at the age of eighteen. Of the remainder, two are feeble-minded, and one, from a sire of criminal tendencies, is an epileptic imbecile.
On September 30, 1912, New York State Prisons held in custody 14,791 persons, of this number, 1,887 were women and 12,904 were men. With the criminalistic the method of reaching the women of such strains becomes very difficult. With the insane, however, the problem is much more evenly balanced. On September 30, 1911, the New York State Hospitals for the Insane held in custody a total of 33,311 persons, 16,010 men and 17,301 women.

There is another type of pedigree by Davenport and Weeks which the same study brought to light—"the hovel type." In such families incest is rife. The accompanying pedigree of this type shows a condition wherein the sterilization of both the male and the female would have been desirable, for, with an equal lack of sex control in both of them, it is likely that, if the unions specified in the pedigree had not been made, both male and female would have found consorts elsewhere and would thus have perpetuated their unworthy stock.
It is thus clear that in the application of the program of eugenic sterilization no difference should be made between the male and female—hereditary unfitness alone should be the criterion.

e. Average Period of Commitment.

The average period of commitment is assumed, in these estimates, to be five years. From the examination of table VI, one is convinced that it is certainly not greater than this term of years. The long estimate used in these calculations will doubtless cover the cases wherein sterilized persons would be returned to the state’s custody. From the report of the New York State Commission of Prisons for 1912, the following table is secured:

**TABLE VIII**

<table>
<thead>
<tr>
<th>To Prison Now (1912) Detaining Them</th>
<th>Number of Times Confined in Other Penal Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>First time</td>
<td>3,076 Prisons.</td>
</tr>
<tr>
<td>Second time</td>
<td>237 Penitentiaries.</td>
</tr>
<tr>
<td>Third time</td>
<td>55 Reformatories.</td>
</tr>
<tr>
<td>Fourth time and over</td>
<td>23 Refuges</td>
</tr>
<tr>
<td>Total</td>
<td>3,390 Jails.</td>
</tr>
<tr>
<td></td>
<td>Miscellaneous institutions.</td>
</tr>
</tbody>
</table>

From this table it is apparent that the reformatories have at some time in the previous career of the inmates of the prisons had custody of a large percentage of them. This is an eugenical advantage for their inborn qualities would, under the policy outlined, have been determined before their reproductive periods began.
For the year ending September 30, 1911, of the total of 7,867 admissions to the hospitals for the insane of New York State, 1,639 were readmissions.

Under the program, the shorter the periods of commitment, the more rapidly will the whole body of individuals possessing hereditary potentialities for defective parenthood be sent through institutions; and if the program were carried out as contemplated by the model law, their blood lines would be cut off the more rapidly. There are, however, many reformatory and other social considerations which must, of course, determine the length of commitment. Sterilization is simply an insurance when segregation ceases.

f. Control of Immigration.

As a final factor, the federal government must coöperate with the states to the extent of excluding from America immigrants who are potential parents and who are by nature endowed with traits of less value than the better ninety per cent. of our existing breeding stock. According to the census of 1910 the native-born population of New York constituted 70.1 per cent. and the foreign-born constituted 29.9 per cent. of the total population of the state. To the state hospital for the insane the native-born element contributed 51.28 per cent. and the foreign-born 48.02 per cent. (.70 per cent. unascertained) of the total admissions for the year ending September 30, 1911. The foreign-born element thus contributed to the New York hospitals for the insane at the rate of 2.019 times that of the native-born population. To the state prisons of New York the native-born element contributed 65.8 per cent., and the foreign-born 34.2 per cent. of the total admissions in the year ending September 30, 1912. For the state prisons, therefore, the foreign-born element contributed admissions at a rate 1.21 times greater than did the native-born population.

The federal government, which has control of immigration, owes it not only to New York State on social and economic grounds, but to the American people on biological grounds to exclude from the country this degenerate breeding stock.

Adequate data, upon which such differential exclusion could be based, can be secured only by investigating the traits of immigrant families in their native towns and villages, by sending trained field workers to such places. In view of the fact that the germ-plasm of
a nation is always its greatest asset, and that the expense of such measures would be paying investments,—not only in dollars and cents, but in the inborn qualities of future generations—the task should be undertaken.  At a cost not at all prohibitive, a large majority of this degeneracy could be detected.  Every nation has its own eugenical problems, and in the absence of a world-wide eugenic policy, every nation must protect its own innate capacities. From the viewpoint of eugenics, differential immigration is not directly a matter of nationality nor of race, but is rather one of family traits compatible with good citizenship.

g. General Considerations; Probable Number of Operations Required.

These calculations are based upon the sterilization of one-half of the socially inadequate persons legally committed to the custody of the state, relying upon the other half being (a) past the reproductive age, or (b) congenitally or pathogenically sterile, or (c) sterilized upon release from some previous commitment, or (d) susceptible to educational influences deterring them from reproducing, or (e) nor carriers of a defective germ-plasm, or (f) dying while still in custody of the state. There are therefore excluded from liability to sterilization the inmates and patients of hospitals and institutions for such classes as the tubercular, the crippled, the blind and the deaf, in cases wherein such persons are not also mentally defective or anti-social as well as simply inadequate personally as useful members of society.

For such classes eugenical education, humanitarian aid, restrictive marriage laws and customs, and possibly, in certain cases, voluntary rather than enforced sterilization appear to be the proper eugenical remedies.

During the year ending September 30, 1912, there were discharged from the state hospitals for the insane of New York 3,796 persons, while 2,886 died while still in the custody of the state.

Education, legal restriction, segregation, sterilization—these four eugenical agencies are of primary remedial value. If the first fail, apply the second; if it also fail, apply the third; if segregation ceases and the first two factors do not deter from parenthood the potential parent of inadequates, apply the fourth. Purify the breeding stock of the race at all costs.
EUGENICS RECORD OFFICE, BULLETIN NO. 10 B.

Of all the defective classes subject to this program, the feeble-minded strains would by the consistent application of such a program die out most rapidly since their defects are either congenital or appear relatively early in life. The decimation of the cacaesthetic, the deformed, the epileptic, the criminalistic and the insane strains would follow probably in order named.

Dr. F. W. Hatch, who supplied the data for table VII., reports also the data for the following table:

TABLE IX
LEGAL STERILIZING OPERATIONS IN CALIFORNIA

<table>
<thead>
<tr>
<th>Types of Persons Sterilized</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dementia praecox</td>
<td>34</td>
<td>18</td>
<td>52</td>
</tr>
<tr>
<td>Manic depressive</td>
<td>45</td>
<td>61</td>
<td>106</td>
</tr>
<tr>
<td>Alcoholic psychosis</td>
<td>22</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td>Epilepsy</td>
<td>12</td>
<td>10</td>
<td>22</td>
</tr>
<tr>
<td>Imbecility</td>
<td>20</td>
<td>12</td>
<td>32</td>
</tr>
<tr>
<td>Confusional and other forms</td>
<td>10</td>
<td>6</td>
<td>16</td>
</tr>
<tr>
<td>Paranoia</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Unclassified</td>
<td>4</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total number of persons sterilized up to June 30, 1912</strong></td>
<td><strong>150</strong></td>
<td><strong>118</strong></td>
<td><strong>268</strong></td>
</tr>
</tbody>
</table>

From the table it is seen that 20 per cent. of the operations were performed on imbeciles or epileptics, and practically all of the remainder on insane persons. The ratio of the number of feeble-minded to the number of insane in institutions is approximately 1 to 10. The California ratio is in keeping with expectation, and therefore appears to form a fair basis for estimating the future ratio of aments and dements, who would be sterilized under a eugenical sterilization law.

Regardless of the time when such a policy is put into effect, if the program outlined works out as calculated,—namely, cuts off the lowest one-tenth of the total population, it would require initial sterilization at the rate of 80 persons per year per 100,000 total population, increasing to approximately 150 per year per 100,000 total population at the end of two generations. If the work should be begun during the present decade, it would, in accordance with conservative
estimates of future population, require the sterilization of approximately fifteen million (15,000,000) persons during this interval. At the end of the time we would have cut off the inheritance of the present “submerged tenth,” and would begin the second period of still more eugenically effective decimal elimination. The infinite tangle of germ-plasm continually making new combinations will make such a policy of decimal elimination perpetually of value. Although the present lowest levels, as we know them, may have disappeared, still it will always be desirable to purge the existing stock of its lowest strains. According to Darwin,

When in any nation the standard of intellect and the number of intellectual men have increased, we may expect from the law of the deviation from the average that prodigies of genius will appear somewhat more frequently than before.

As a logical corollary to this, we should expect the fortune of recombination of ancestral elements to produce fewer human “culls.”

The conservative sterilization program, beginning with only a few operations, applying only to those most patently degenerate, will allow in time for the segregation, in the complex network of national heredity, of a larger portion of the good from the bad traits, making possible the salvage of a great portion of good that is now associated in the same individual with the most unworthy qualities. It is even urged against eugenics that, if sterilization or other eugenic elimination had been the rule, so and so would not have been born. Perhaps so, but would not other personalities,—one or perhaps many—of equal or better natural endowment have appeared in his or her place?

The present experimental sterilization laws have been pioneers—pointing the way—and as such they are to be commended, but as remedies for social deterioration they have not thus far, in a national way, functioned. Indeed less than 1,000 sterilizing operations have been performed under the immediate provisions or even under the shadow of the twelve statutes. With this in view, the rate of sterilization required seems high, but, unless the people of the several states are willing to attack the problem in its entirety, they cannot hope to find in sterilization, as complementing segregation, anything more than a slight palliative for the present condition from which we are seeking relief. A halfway measure will never strike deeply at the roots of the evil. In animal breeding when any great results are wrought, or when new and superior breeds are made
within a few generations, it is the selected one per cent. or at most the tenth part that are selected for reproduction rather than the upper ninety-odd per cent. which this conservative program calls for. But since segregation and sterilization seek not to make over the upper levels of the race, nor to establish new and better human strains—these are the tasks for constructive eugenics during the long indefinite future,—but simply to cut off the most worthless one-tenth, the rate of sterilization required seems sufficient.

The recommended program would give ample opportunity for beginning on a very conservative scale. No mistakes need be made; for at first only the very lowest would be selected for sterilization, and their selection would be based upon the study of their personal and family histories, and the individual so selected must first be proven to be the carrier of hereditary traits of a low and menacing order. As time passes, and the science of eugenics becomes more exact, and a corps of experts, competent to judge hereditary qualities, are developed, and public opinion rallies to the support of the measures, a larger percentage could, with equal safety, be cut off each year. While the cutting off of personalities of as little worth as our present lowest one-tenth, will take two generations, still some benefits would begin to accrue almost immediately after the inauguration of the policy. It would, of course, be possible to cut off a large portion of our lowest levels at one fell swoop, but the dangers, the difficulties—both practical and scientific—and the injustice involved would be insuperable. No one advocates such a plan, but a policy of small beginning and conservative development seems wise.

Unless all of the states co-operate in the purging of the blood of the American people of its bad strains, and their co-operation is supported by the federal government in respect to immigration, as indicated in the calculations, we should not expect the program to work out as calculated. The federal government must, at some future time, undertake an inquiry in the home countries of prospective immigrants, concerning their hereditary traits. Such a program, nation-wide in extent, is possible only when the public becomes convinced that it is possible to judge of the hereditary potentialities of a given individual, and that in enforcing the experimental laws already on the statute books scientific truths were being applied in an unerrring and humane manner.
There is in this program nothing from a financial point of view to hinder its immediate inauguration, as outlined, by all of the states. Indeed, the expense per capita to the people of the state for the care of these socially inadequate of the present lowest levels would decline rapidly. By painstaking analysis of state references, the following table has been worked out.

**TABLE X**

**STATE EXPENDITURES FOR THE SOCIALLY INADEQUATE: PER CENT. OF TOTAL STATE EXPENDITURES DEVOTED TO INSTITUTIONS FOR THE SOCIALLY INADEQUATE**

<table>
<thead>
<tr>
<th>DATE</th>
<th>CONNECTICUT</th>
<th>MASSACHUSETTS</th>
<th>WEST VIRGINIA</th>
<th>VIRGINIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1891</td>
<td>21.5%</td>
<td>23.9%</td>
<td>23.6%</td>
<td>27.4%</td>
</tr>
<tr>
<td>1892</td>
<td>25.7%</td>
<td>23.6%</td>
<td>25.3%</td>
<td></td>
</tr>
<tr>
<td>1893</td>
<td>19.7%</td>
<td>26.9%</td>
<td>22.6%</td>
<td>22.6%</td>
</tr>
<tr>
<td>1894</td>
<td>25.5%</td>
<td>26.9%</td>
<td>24.8%</td>
<td>24.4%</td>
</tr>
<tr>
<td>1895</td>
<td>24.4%</td>
<td>23.9%</td>
<td>26.6%</td>
<td>25.2%</td>
</tr>
<tr>
<td>1896</td>
<td>24.7%</td>
<td>23.8%</td>
<td>27.2%</td>
<td>25.3%</td>
</tr>
<tr>
<td>1897</td>
<td>25.3%</td>
<td>22.7%</td>
<td>27.9%</td>
<td>25.0%</td>
</tr>
<tr>
<td>1898</td>
<td>25.5%</td>
<td>23.9%</td>
<td>27.0%</td>
<td>23.8%</td>
</tr>
<tr>
<td>1899</td>
<td>23.5%</td>
<td>21.2%</td>
<td>28.4%</td>
<td>22.3%</td>
</tr>
<tr>
<td>1900</td>
<td>23.1%</td>
<td>21.0%</td>
<td>27.6%</td>
<td>22.7%</td>
</tr>
</tbody>
</table>

Total for decade... 24.7% 23.7% 26.4% 24.3%

Cost to the people per capita for the decade $23.28 $23.84 $16.06 $17.76

<table>
<thead>
<tr>
<th>DATE</th>
<th>CONNECTICUT</th>
<th>MASSACHUSETTS</th>
<th>WEST VIRGINIA</th>
<th>VIRGINIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>24.7%</td>
<td>30.3%</td>
<td>25.3%</td>
<td>21.8%</td>
</tr>
<tr>
<td>1902</td>
<td>26.8%</td>
<td>28.7%</td>
<td>24.8%</td>
<td>22.5%</td>
</tr>
<tr>
<td>1903</td>
<td>20.9%</td>
<td>27.3%</td>
<td>27.4%</td>
<td>22.4%</td>
</tr>
<tr>
<td>1904</td>
<td>23.4%</td>
<td>37.2%</td>
<td>26.1%</td>
<td>21.2%</td>
</tr>
<tr>
<td>1905</td>
<td>20.6%</td>
<td>36.1%</td>
<td>21.2%</td>
<td>19.6%</td>
</tr>
<tr>
<td>1906</td>
<td>29.6%</td>
<td>37.6%</td>
<td>18.4%</td>
<td>18.4%</td>
</tr>
<tr>
<td>1907</td>
<td>23.2%</td>
<td>36.4%</td>
<td>14.7%</td>
<td>19.3%</td>
</tr>
<tr>
<td>1908</td>
<td>23.4%</td>
<td>34.9%</td>
<td>13.1%</td>
<td>19.6%</td>
</tr>
<tr>
<td>1909</td>
<td>16.2%</td>
<td>38.3%</td>
<td>11.6%</td>
<td>19.1%</td>
</tr>
<tr>
<td>1910</td>
<td>18.9%</td>
<td>37.1%</td>
<td>15.0%</td>
<td>19.4%</td>
</tr>
</tbody>
</table>

Total for decade... 22.0% 35.0% 17.7% 20.1%

Cost to the people per capita for the decade $34.68 $29.54 $26.95 $23.27
This table, which the committee hopes to be able to extend so as to include data for all of the states, shows the movement in state expenditures for institutions for the socially unfit. In order to keep this growth of expenditure from overwhelming and bankrupting out state governments, it behooves the several states to provide more ample opportunity for the managers of their institutions to work out the industrial and farming systems, whereby the inhabitants of their institutions may not only be happier, healthier, and better trained than at present, but will also contribute more largely to their own welfare and maintenance. Our institutions for the socially dependent are more nearly approaching hospitals and vocational schools in their equipment and management, and less and less have the appearance and real character of jails and dungeons. Any money, moreover, that the state invests in such modern plants will not be wasted, for, when the anti-social classes as we now know them diminish in number, the lower tenth will always need vocational training such as these changed institutions could so well provide, and the cost of such training like all expenditure for fitting education would be a national investment rather than a dead expense or a tribute to degeneracy.

Moreover the increasing fitness to their purposes should actually, and does appear to so govern the evolution of our state institutions for the socially inadequate. It is not, therefore, to be presumed that a state would develop its institutions and its sterilization policy at a constantly increasing rate, all for the purpose of bringing the program of decimal elimination and consequently the usefulness of most of the costly institutions to a sudden end, the former result as indicated by tables I., II., III. and IV. of the inserted chart. These calculations demonstrate simply the possibility of achieving such a program of elimination, but the program itself is subject to change and betterment. For instance, long before the end of two generations the eugenics commissions of the several states should, and doubtless will, be authorized and directed by law to extend their investigations and their selections for sterilization to the population at large. The end sought, namely, the cutting off of the lines of descent of the present lowest one-tenth of our existing population could, by such an extension, be accomplished without the accompanying institutional growth which the indefinite continuation of the present initial policy calls for; not only is this true,
but in addition the contemplated end would be brought about more rapidly. Such an extension of authority to the whole population should, however, in the opinion of the committee, be postponed for a term of years, ten possibly, thereby permitting the growth of eugenic knowledge and sentiment among the people, the education of a corps of experts in human heredity, and the building up of an inventory by the state of its cacogenic human stock.

There is one contingency by which the authority of the eugenics commission would have to be extended to the whole population at an earlier date. This contingency consists in the possibility that the Supreme Court of the United States might, in case the constitutionality of one of the existing sterilization laws is tested before that body, decide that the application of sterilization only to inmates of the institutions constitutes a breach of the Fourteenth Amendment to the Federal Constitution, which provides that none of the states shall “deny to any person within its jurisdiction the equal protection of the laws.” In the light of the legal opinions presented in this report, it is not believed that the Supreme Court would hand down such a decision, and in the interest of sound eugenical progress it is hoped that it will not be necessary to extend the authority of the eugenics commission to the whole population immediately, howsoever desirable such an extension would be in the future. The immediate limitation of the law to the inmates of institutions is solely in the interests of justice and unerring application, and should not therefore be deemed discriminatory.

Attention is directed toward an interesting phenomenon of tables I., II., III., and IV. of the Rate of Efficiency chart of this chapter. The striking feature in the working out of the suggested policy consists in the fact that absolutely the numbers within the socially inadequate classes would increase for a few years, after which, by the constant application of the same policy, the decline would come very rapidly. Such phenomena are common with practically all things that change by the application of persevering forces—business ventures, institutional growth, the working out of governmental policy, the trajectories of missiles, military campaigns, the ravages of a plague, the ontogenesis of an individual, and the rise and decline of plant and animal species—all experience strenuous struggle in overcoming initial inertia or resistance; finally
the movement is accelerated, and, gathering momentum, the passing by a given point, a culmination or fruition, or an extinction as the case may be, is achieved at a relatively great speed.

h. Conclusion.

The data for these calculations have been carefully compiled, and the estimate for each of the factors is made on the conservative side—in each case tending to delay the culmination. The arithmetic is correct; if one accepts the conditions, he must accept the conclusion also. If it is held that the bases for the calculations are too optimistically chosen, then it is necessary only to extend the time of culmination; the essential thing is, that such an end is possible in consonance with modern humanitarian ideals and reasonable social endeavor. However, for the reasons enumerated in this chapter, the committee believes that the time allotted—namely, two generations—is ample for cutting off the inheritance lines of the major portion of the most worthless one-tenth of our present population, if the recommended program be consistently followed. It is clearly within the power of the American people and not at too great a cost in money and effort to forestall the continuation of the great mass of defectiveness from which we now suffer. The committee believes also that this end can be accomplished conservatively, beginning on a small scale and keeping pace with institutional growth and scientific study; and above all, that it can be accomplished in a lawful, just and humane manner without detriment to, but, on the contrary, to the great advancement of, national welfare.
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