CHAPTER 3

State Eugenic Sterilization Legislation

◖1907◗

In 1907, Indiana passed the first eugenic sterilization policy in the nation (Reilly, 1991). Many other states followed, and by the time the eugenics movement had run its course, the majority of states had policies in place that allowed for involuntary sterilization for eugenic purposes, especially targeting people diagnosed as "feeble-minded" or "insane," along with other groups that were deemed to be a burden on the community (Reilly, 1991). These policies were not federal measures, yet I have included them in this book because they form one of the most egregious examples of public policy as a means of social control over a vulnerable community group. Involuntary sterilization as a method of "protecting" the nation from the rapidly expanding population of "deviant" or "defective" people also provides an important example of the various ways that vulnerable populations can be framed as an important threat to society and demonstrates how the basic rights of such individuals can be limited because of this threat.

Historical Overview and Nature of the Social Problem

Involuntary sterilization policies were passed within the context of the American eugenics movement, which lasted from 1900 to approximately 1930. Based on the writings of England's Sir Francis Galton (1870), eugenics held that for society to thrive, a program of differential reproduction must be supported. Eugenicists argued that policies needed to be in place that reinforced greater breeding among the more "fit" members of the population (termed "positive eugenics") and diminished breeding among those who were deemed "unfit" (termed "negative eugenics"). Eugenic thinking took hold in the United States in 1900 following the rediscovery of Gregor Mendel's writings

on genetics, and a movement to support eugenic policies grew rapidly over the next few decades (Kevles, 1985).

By 1910, eugenicists had zeroed in on presumably feeble-minded people, and particularly "morons," the highest functioning subgroup included in the feeble-minded designation (the others were "idiots," the lowest functioning, and "imbeciles"), as the most appropriate targets of eugenic control (O'Brien, 2013). Eugenicists argued that such individuals, many of whom were presumably immigrants, procreated in large numbers and that they and their progeny were responsible for a host of social problems, including poverty, alcoholism, crime, venereal disease, and prostitution. Such individuals were measured by means of early (and faulty) intelligence tests, and advocates of control frequently spoke of the damage that procreation among such groups might bring to the nation (Trent, 1994).

The first major form of eugenic control was widespread institutionalization; many states attempted, some successfully, to pass policies that would require the involuntary institutionalization of people who were diagnosed as feeble-minded ("Feeble Minded Boys," 1915). Indeed, one of the reasons that the feeble-minded population was targeted by eugenicists more so than those diagnosed as insane was because policies were already in place to allow the institutional control of people in the insane group.

Policy Overview

Following the introduction of the vasectomy in the late 1800s and the salpingectomy (tubal ligation) soon after, sterilization became a palatable eugenic option for many medical professionals, agency superintendents, politicians, and others. As the procedure became more acceptable, states began introducing legislation allowing for the voluntary and even mandatory sterilization of feeble-minded people. By 1931, 30 states had passed eugenic sterilization laws (Popenoe, 1934). Not everyone, however, waited for such laws to be passed before engaging in sterilization and even castration. F. Hoyt Pilcher, the superintendent of a Kansas asylum, for example, wrote in his annual report in 1894 that he had castrated a number of charges, mainly "confirmed masturbators" (p. 7).

Although some eugenicists preferred institutionalization over sterilization, most came to view the sterilization as either preferable to commitment

or as a useful complement to it. According to Theodore Robie (1934), a supporter of eugenic sterilization laws, a 1930 survey of the members of the American Association for the Study of the Feeble-Minded found that 227 out of 243 respondents supported the practice (p. 203). This preference for sterilization was primarily a result of its cost benefits relative to institutionalization. Many hoped that it would become a method of reaching that segment of the feeble-minded population that had not come under institutional control, especially in rural communities. The leading advocate of the state laws was Harry Laughlin of the Eugenics Record Office in Cold Spring Harbor, New York. Laughlin developed a model sterilization policy and traveled to a number of states in a largely successful effort to develop and lobby for passage of such laws (Laughlin, 1925).

In many states, institutionalized feeble-minded people who could live in the community were routinely "paroled" once they "voluntarily" agreed to submit to sterilization. In some institutions, residents could not even go on short vacations or family visits unless they first received the operation (Popenoe & Johnson, 1933). Realizing that the substantial cost of building an institution often stood in the way of large-scale segregation, many eugenicists believed the facilities would be more economical if they had a "revolving door" policy, serving larger numbers of people for brief periods and sterilizing anyone who was transferred into the community.

One of the primary reasons sterilization won support from many eugenicists was that it was widely viewed to be a humane measure. The procedure would allow the individual to live outside of the institution and possibly even to marry, and, therefore, it could be justified as being in the best interests of "paroled" individuals. Sterilization, one eugenicist contended, "would interfere with the real liberty of the individual less than custodial care" ("The Jukes in 1915," 1916, p. 474). Difficulties arose, however, when authorities questioned the constitutionality of some of the state laws, usually because they were alleged to be cruel and unusual punishment or violated the due process or equal protection clauses of Amendment XIV to the U.S. Constitution (U.S. Const. amend. XIV). The U.S. Supreme Court sought to settle the question in its infamous 1927 *Buck v. Bell* decision.

Carrie Buck was a resident of a state institution in Lynchburg, Virginia. J. D. Smith and Nelson (1989) contended that, like many poor young women

of her day, Carrie's "immorality," as evidenced by her bearing an illegitimate daughter, was the real reason—rather than her intellectual capacity—she was targeted for sterilization. They also questioned whether Carrie or her daughter—who was given an IQ test when only eight months old—merited the feeble-minded diagnosis they were given (Smith & Nelson, 1989). The Supreme Court found in the state's favor and, in an eight-to-one decision, held Virginia's law to be constitutional, even when it was not voluntarily applied. The majority opinion, which included the infamous phrase "three generations of imbeciles is enough," was written by the famous jurist Oliver Wendell Holmes, Jr. (Dudziak, 1986). Once *Buck v. Bell* (1927) was decided in favor of Virginia, other states that had previously been unwilling to enforce their existing sterilization laws began to expand their employment of the procedure, some dramatically, because it had been given the blessing of the Court.

Effectiveness

By January 1935, more than 20,000 people were sterilized in the United States, and the majority of these operations took place in California (Reilly, 1991). Procedures continued into the 1970s, and about 60,000 people eventually were subjected to involuntary eugenic sterilization within the nation. The major goal of these policies was to diminish the spread of feeble-mindedness and other "degenerate" conditions. In this regard, these policies were an abject failure. Eugenic solutions to social problems were seriously flawed because they viewed heredity as almost fully explaining human behavior, and they were based on a simplistic reading of Mendel's laws and how these laws could be used to transform the course of human evolution (Kevles, 1985). In addition, the policies used extremely rudimentary, highly biased, and unscientific intelligence tests as the primary measure of intelligence (Trent, 1994).

Many eugenic supporters came to believe that large-scale sterilization would not solve major social problems, yet they did feel it would be beneficial in individual situations to save potential children from parents who had severe mental illness, mental retardation, or otherwise were deemed inadequate parents. As Kline (2001) noted, this is why involuntary sterilizations continued decades after eugenic thinking fell into disrepute in some professional and scientific quarters. In a number of states, eugenic sterilization gradually

evolved into the forced sterilization of poor and minority women, especially targeting those on AFDC or other forms of "welfare" (Roberts, 1997).

The eugenic movement in the United States did have an effect on the development of Nazi eugenics under Adolf Hitler. Hitler (1925/1971) had expressed support for eugenic thinking in his early manifesto *Mein Kampf*. Although the Nazi programs certainly would have been implemented regardless of the American movement, the design and course of these programs, especially their 1933 sterilization law (Peter, 1934; Proctor, 1988), was based largely on the U.S. example. This law was passed shortly after Hitler took office, and under the policy, hundreds of thousands of Germans, largely people diagnosed as feeble-minded or insane, were involuntarily sterilized. In 1939, the Nazis developed their most destructive eugenic program when they had gas chambers installed in six mental institutions. For the next several years, they transported patients from asylums and hospitals throughout Germany to meet their end in these facilities (Proctor, 1988). These gas chambers were used by the Nazis to test out the most efficient means of mass murder and to set the stage for carrying out the Holocaust.

Following the Nazi experience, eugenics became a taboo topic of discussion for several decades. More recently, however, a highly contentious conversation about the role of eugenic thinking has reemerged. To a large degree, this is because of the development of eugenic or "quasi-eugenic" policies in the United States and other countries. Many have argued that current bioethical procedures, such as prenatal testing coupled with abortion, do not constitute "eugenic" practices because they are the result of parental decisions and are not imposed by the state. However, others have contended that such practices, whether they are the result of individual parental decisions or are incentivized or mandated by the state, are driven by cultural values that derogate disability and thus bear a close resemblance to historical eugenics (O'Brien, 2011).

Analysis Element: Social Engineering

Nations may, at times, attempt to engage in *social engineering*, described here as efforts to either encourage or discourage—through policy development—social roles, such as parenthood; the occupational or educational paths individuals may take; where they choose to live; and other individual choices. One

can argue that the nation has a vested interest in such decisions and therefore should have the right to affect them. The country might, for example, pass a policy to pay off student loans for medical professionals who agree to work in underserved areas for a certain length of time. Sterilization policies can be viewed as an example of social engineering.

The primary rationale behind involuntary sterilization policies was a eugenic attempt to enhance the quality of the U.S. population through an early (and flawed) form of controlled human breeding. Criticisms over human rights violations were dismissed by the belief that the good of the nation was being served and that the "burden" of an expanding population of "unfit" people was economically and socially harmful to others. "Morons" were thought to be procreating in much greater numbers than the rest of the population, a supposition that has frequently been made about minority and immigrant groups, and therefore had to be controlled.

Forms of social engineering are more prevalent in communitarian nations, where individual desires and goals are generally taken to be less important than the societal good. In the United States, where individualism and personal freedom are held in high regard, and where many are suspicious of the expansion of the government to manipulate the public, social engineering is less obvious but still may be enforced in less noticeable ways, such as manipulation of the tax code in a way that benefits certain groups and harms others. Childbearing in particular may be incentivized or disincentivized, depending on the group, through various policies.