

THE RESPONSIBILITY OF THE STATE TOWARD THE
MENTALLY DEFICIENT

by

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CHAPTER I - MENTAL DEFICIENCY

SOCIAL ASPECTS

Numerous definitions are in use but all contain three essential and interrelated concepts: (1) Marked limitation or deficiency of intelligence frequently associated with other shortcomings of personality, which is due to (2) lack of normal development rather than to mental disease or deterioration, and which manifests itself in (1)
(3) social and economic incompetence.

The American Association for the study of the feeble-minded in 1910 adopted the following classification which was the practice established at that time in this country in the larger institutions:

1. "The term 'feeble-minded' is to be used generically to include all degrees of mental defect due to arrested or imperfect mental development, as a result of which the person so affected is incapable of competing on equal terms with his normal fellows or of managing himself or his affairs with ordinary prudence.
2. The feeble-minded are divided into three classes, namely -
Idiots - Those so defective that their mental development never exceeds that of a normal child of about two years.
Imbeciles - Those whose development is higher than that of an idiot, but whose intelligence does not exceed that of a normal child of seven years.
Morons - Those whose mental development is above that of an imbe-

cile, but does not exceed that of a normal child of about twelve
"(2)
years.

Various qualifying words make this classification more descriptive, such as low, middle, high, backward, retarded, unstable. It is not claimed that it has any virtues other than usefulness. Others, notably Barr of the Pennsylvania Training School at Elywn, Pennsylvania, has a classification which is based on the educational possibilities of a patient, therefore giving a prognosis. Others attempt an etiological grouping with primary headings of congenital, developmental, accidental, with their subdivisions. The Royal College of Physicians of London defined feeble-mindedness in the same terms used in the beginning of this paper. The wording of the Mental Deficiency Act of 1913 in England, which is the legal definition, is
(3)
very similar.

The story of how these definitions were finally arrived at is a devious one. The salient points in the battle of arriving at some unanimity were the discovery of the moron and intelligence testing. Before such concepts as dull normals and high grade morons, feeble-mindedness was an easy question since only idiots and imbeciles were included. Then the intelligence tests, after many adaptations, were defended as being objective methods of rating a subject's endowment and providing an index for his potentiality for future training. Dr. Goddard in 1910 recommended the classification on page one on the basis of Benet-Simon intelligence tests. But it was soon obvious that

everyone rating below 12 was not feeble-minded. Dr. Goddard himself has recently explained that the upper level of feeble-mindedness, moron type, was placed at twelve years because a survey of institutional inmates showed this to be the upper level of persons in institutions for the feeble-minded. As a consequence, Dr. Goddard states: "It was for a time rather carelessly assumed that everybody who tested twelve years or less was feeble-minded." (1) Thus it was that though feeble-mindedness is a psychological problem the final test is that of social adaptability. (2) Dr. Tredgold in a long discussion summarizes this in the oft quoted paragraph containing this definition. "It is the recognition of this irreducible minimum which enables us to draw the line between the normal and the abnormal, between the physiological and the pathological, and which justifies us in designating people who fall short of it as suffering from deficiency of mind. The condition is a psychological one, although the criterion is a social one, and we may accordingly define amentia as a state of restricted or arrest of cerebral development, in consequence of which the person affected is incapable at maturity of so adapting himself to his environment or to the requirements of the community as to maintain existence independently of supervision or external support". (3)

The terminology employed varies slightly with different authors, but in this country amentia, mentally deficient and feeble-mindedness are synonymous.

The necessity for refinements of definition and more accurate means of establishing amentia is apparent when one investi-

(3)

gates the incidence. Tredgold refuses to quote figures from any country relative to numbers because they are so unreliable. "The reasons for this are numerous, the chief being the inability or unwillingness of parents to recognize mental abnormality, their total incapacity to distinguish between its various forms, and their not unnatural reluctance to proclaim its presence on a census paper."⁽³⁾

The first reliable figures in any country were obtained by a commission in England in 1904. Later I shall refer to their findings in 1929. Here a personal survey was made by picked men, to each of whom an area was assigned, in which all elementary schools, poor-law institutions, charitable establishments, training homes, reformatories, common lodging houses, prisons, idiot asylums, hospitals, etc. were personally visited. This investigation was also to see the outdoor relief officials, clergy, and charity organizations or any similar channel which could afford information. Only sixteen selected areas could be so covered. The average was 4.03% per 1000 population, or 1 in every 248, but the variation was great so that computation for totals are complex. Idiots are least plentiful, imbeciles are three times as numerous as idiots and imbeciles combined. ?

For the United States no reliable figures are possible.

(4)

Dr. W. E. Fernald has gathered statistics relative to the number of feebleminded and epileptic in institutions, as follows:

<u>Date</u>	<u>Number</u>	<u>Ratio per 100,000 population</u>
June 1, 1890	4,001	6.4
Jan. 1, 1904	15,599	19.3
Jan. 1, 1910	23,358	25.4
Jan. 1, 1916	34,137	33.7

In the same paper he says "that the present State provision for this class in the country at large is far below what it should be..... twenty states have a higher ratio of provision than the United States as a whole, and one of them, Massachusetts, is caring for nearly three times as many feeble-minded and epileptics per 100,000 population as are being cared for in the country at large. And yet Massachusetts acknowledges that it is doing but a small part of what it should to give these defectives the care they need." Pollock and Furbush claim 40,519 defectives were in institutions on January 1st, 1930.

The psychological tests of recruits in the army in the last war are often quoted as an index to the number of aments in the United States. Dr. Bailey claims that there were as many as six per thousand and he considers that even this is below the total rate of incidence in the population generally. Before the war most estimates were not over two per cent.

The Army intelligence tests also forced the question of the social criterion in establishing feeble-mindedness, for according to official report 47.3 per cent of the white drafted men were found to have mental ages of less than thirteen years and this would be rated as feeble-minded according to generally accepted classification. Imagine the implication that nearly 50,000,000 people in the country must presumably be feeble-minded. Even after corrections and allowances had been made 17.6 per cent had mental ages under eleven years, which would lead to an equally absurd estimate of 19,000,000 aments in the United States. The first criticism is, of course, that since

the average intelligence is the normal, the range of feeble-mindedness had been placed too high if a 1/6 to a 1/2 of the population is included. To those who fear for democracy on these grounds one could point out that these men rated as morons gave no impression of social inadequacy. They were extremely competent in adjusting themselves to the nerve racking business of war. Most of them by far had good records at home, both for industry and conduct. Once and for all it showed that a fairly low rating in an intelligence test does not in itself imply feeble-mindedness. The final test is social competency.

If the figures of the Royal Commission of 1929 are applied to the United States under exactly the same conditions as there is, in the opinion of experts, reason to believe, they would be very similar. Their results were about 8 per thousand general population, which in the United States would be less than one million total. This figure indicates the size of the problem which is so huge that only concerted action by the State can hope to cope with it. (7)
The above figure is very conservative. P. Popenow, the statistician, and publicist from California who has been so active a force in making sterilization effective estimated that there were 10,000,000 socially inadequate persons at large who are a menace to society and who are continually undermining the race. His method was that of testing the intelligence of Los Angeles school children, where he found 4% with an I.Q. below 70, where 100 is normal. Popenow does not propose sterilizing more than 1% because many do find their place in society and did not inherit their deficiency. But his conclusion does mean

that 1,200,000 people in the United States are a State responsibility.

These figures are more suggestive than the number of patients actually in institutions at the present time for admittedly only a small percentage of the total are in institutions. The government publications "Feeble-minded and Epileptics in State Institutions" put out by Government Printing Office, 1931, are the source of the figure that 64,253 aments were in institutions in 1929. The following facts regarding costs are taken from "Patients in Hospitals for Mental Diseases in 1923," United States Government Printing Office, and assuming that institution costs are comparable. Aside from ethical or moral considerations the enormous expense incurred in the care of aments is a principal consideration in how they are to be cared for.

"The personnel of the 153 State hospitals which reported included 962 physicians, 80 resident dentists, 318 occupational therapists, 89 social workers, 1,087 graduate nurses, 17,836 other nurses and attendants and 13,812 other officers and employees.....The general average number of patients to each physician was 234.3; to each other officer and employee 6.6; and to each nurse and attendant 11.5
"(8)
The personnel varies greatly.

The total estimated value of these institutions was \$246,348,925.52; the real estate was valued at \$212,873,290.16 and the personal property at \$33,475,635.36. The total investment per patient, based on the number of resident patients at the end of the year (1923) was \$1,092.80."

As there is a lack of uniformity in hospital accounting in several states, as well as wide variations in states, local factors, building costs, etc., the data given for hospitals in different states are not strictly comparable. They have value in indicating costs, however.

"The total average daily patient population of the institutions reporting was 225,685, the total expenditures for maintenance were \$63,673,159.60 and the general average per capita cost for the year was \$283.13." It would be safe to say that the cost per capita for the care of the feebleminded would be much higher if adequate training facilities, larger staffs and greater medical care were provided.

A more difficult task presents itself which I can only present in a sketchy form and that is the incidence of feebleminded who are cared for because of their transgressions. To those interested in the balance sheet for the taxpayers it must be a nice problem whether it would not be better to stop much crime, immorality, illegitimacy, disease, pauperism at its source in caring for it intelligently or to meet the expense as we now do through our police machinery, courts, jails and prisons, and private or public charities.

A prominent phase of this picture is the recidivist about whom Dr. Anderson has done some writing from his experience as medical director of the Municipal Court in Boston. "The feebleminded possibly form the most important single group of which our courts need to take cognizance. They furnish a substantial nucleus to that most

expensive body of individuals who clog the machinery of justice, who spend their lives in and out of penal institutions and furnish data for the astonishing facts of recidivism; facts which have served to awaken our social conscience to the need of more adequate treatment under the law for repeated offenders."

There is "a very well defined group who do not profit by the usual methods, who fail to respond properly to any form of treatment, who on being released from prison very quickly find themselves again in court; who, when placed on probation, are usually surrendered if not first placed on inside probation - that is, within homes and institutions not penal in character - who seem totally unable to adapt themselves to society's laws and customs, and thus are arrested over and over and over again. A study of this class indicates that feeble-mindedness stands as a causative factor in from twenty five to forty per cent of cases. In going over a group of one thousand offenders, individuals who were difficult problems and selected by the court and probation officer as needing mental examinations, I found thirty six per cent feeble-minded". (9) "Venereal disease and feeble-mindedness form a combination as productive of human wretchedness and misery as any scourge that affected mankind. Twenty three per cent of the women at the Reformatory at Farmingham, Massachusetts, who were fit subjects for permanent segregation on account of mental defects, showed ninety per cent of gonorrhoea and sixty per cent of syphilis." (9)

From a series of mental tests performed on the unmarried mothers coming into the obstetrical service of Cincinnati General Hos-

(10)

pital, Weidensall reports: "The results of the tests lead to the conclusion that not more than twenty per cent of the unmarried mothers can be safely pronounced normal.....From forty to forty-five per cent of the unmarried mothers are almost without question so low-grade mentally as to make life under institutional care the only happy one for themselves and the most economical and only safe arrangement for society."

"The Bureau of Juvenile Research of Ohio reported in 1915 mental examinations of 671 boys, nearly ten months admissions to the Boys Industrial School of Ohio and 329 girls almost twelve months admissions to the Girls Industrial Home of the State. By the regular year scale, Binet-Simon, 57% of these juveniles (571 of 1000) were found to be feeble-minded. ^{"(11)}

These condensed figures indicate how the State, however inadvertantly, actually pays heavily for the upkeep of the feeble-minded as well as tolerating the damages they do. The State is forced to assume the responsibility in these cases. The following paragraph suggests that society is paying in many invisible ways, comparable to the sales tax which most people do not openly object to because it is not on a tax bill presented to them for payment.

"The feeble-minded are unable to follow regular employment and therefore add to the number of 'floating' or irregular employees. Owing to their tendency to become criminals and paupers, and to their inability to comprehend the principles of right living

and personal hygiene, this group of individuals forms a large proportion of the penal population and adds materially to the spread of communicable diseases." (12)

It is safe to say that the implications in the paragraph above are among the most far reaching in any discussion of the responsibility of the state to the feebleminded. How far is the legally entitled to go in restraint? None of the numerous authorities I have read deal at any length with this question yet it is implicit in the newspaper reports of legislative debates every biennium. To commit the criminal or children is easy because of obvious reasons, but to employ feeblemindedness as a charge for commitment is the use of a new instrument to regulate society. Transient labor is a large economic problem which is adequately studied by those interested and which I cannot comment upon. From their ranks spring many a radical labor leader and agitator. In their clashes with organized society there have been instances where they were convicted in criminal courts of offenses which many people are convinced that they did not commit. The Meyer-Heywood-Pettibone trial in Chicago, Mooney and Billings in San Francisco, Sacco and Vanzetti in Boston are instances. It is the fear of many that stringent application of the law for committing the feebleminded might be used as a weapon against those undesirables much as an alien and sedition law or the criminal syndicalism act. I understand that in California especially is this the fear of the labor movement and the I.W.W. It is this aspect which compels such phrases as "not class legislation", which is in the Supreme Court de-

cisions quoted in the last chapter. Academically, it is most interesting to speculate how far the State may exercise its responsibility. It is also rather novel to have the church groups and the labor movements agreed on this subject.

The fecundity of the feebleminded is one of their most
(13)
dramatic qualities. Dr. Guyer's well written and typical plea is worth quoting: "But why this increase of defectives? It cannot be attributed to oppression, to grinding poverty, or to decline in attention to our sick and needy, for never was prosperity greater, never were charities more flourishing, never such activity in the search for palliatives and cures. The simple fact is we are breeding our defectives. The human harvest like the grain harvest is based fundamentally on heritage. And to get a better crop of human beings we must as with other crops weed out bad strains.

To whatever source of information we turn the facts are essentially the same. Abroad we find that in England, for example, the ration of normal to defective more than doubled between 1764 and 1896. (Better diagnosis and a more careful survey?) At home we learn that in the State of New Jersey the number of epileptics doubles every thirty years. And other investigators estimate that the fecundity of mental defectives in general is about twice as great as that of the average of our population.....

If we include two million individuals cared for annually in various institutional homes, hospitals and dispensaries as depen-

dants, the estimated total of insane, feeble-minded, epileptic, deaf and dumb, criminals, juvenile delinquents, paupers and other dependants in the United States in 1910 was approximately three million, or one in every thirty of our population. With the higher fertility of certain of these classes and with only a small percentage under custodial care where will it all end?"

Guyer also emphasizes the fact that it is easier for the unfit to propagate because unwise charity prevents the rigors of natural selection to take its toll. Whether this is so is a question.

(14)

Dr. Meyerson, one of the best known psychiatrists in America, conducted a survey of the inmates of the Fernald State School at Waverly. He concluded that in general those individuals whose feeble-mindedness was apparently of genetic origin were of such low grade mentally and physically that the males were not capable of sexual intercourse, and the fertility of the females was doubtful. He also says explicitly that even though fertile it is doubtful whether they would be subjected to either seduction or rape, and concludes that among this group there is a strong tendency to race extinction due to the very low physical and mental level. "The size of families in the Vineland, Waverly and Wrentham series, as well as in the Juke and Nam families, is not alarmingly large. It is a well known demographic fact that each pair of parents must bring four children to maturity in order to maintain the population at a constant level. When allowances are made for the large number of feeble-minded persons who

never reproduce because of sexual sterility or unattractiveness, and the others who are prevented from reproducing because of being segregated in institutions, it would appear that the feebleminded are scarcely holding their own in the general population," (1)

Meyerson also concluded after his careful survey that "what is really meant by the talk of the fertility of the feebleminded is the fertility of people of low cultural level, of low economic status, or else unsophisticated in the trends of modern society." (14)

Again one can only say with certainty that in view of recent investigations hereditary transmission is more complex, less productable, nor so alarming numerically as was formerly believed.

CHAPTER II - MENTAL DEFICIENCY

MEDICAL ASPECTS

Since every complete discussion of the control of a medical problem includes a study of the etiology, I shall round out this paper with a rapid survey of the causes of amentia as far as they are known.

"Congenital" and "Acquired" are not used as descriptive words for classification, as one finds universally in ordinary lay discussion because the real differentiation to be made are the influences respectively of heredity and environment. "For instance, a congenital condition may be caused by a factor in environment acting during uterine existence and therefore really be acquired. It also happens that mental deficiency may not show itself until several years after birth and apparently be acquired, although it is actually due to innate causes."⁽³⁾ So the words intrinsic or primary and extrinsic or secondary have been employed to differentiate sharply between hereditary and environmental factors, the first including changes in the germ plasm before conception occurs and the latter those after. The relative importance of these factors is of the utmost practical importance and the keynote of many disputes regarding this subject. Many persons, like Clarence Darrow in the American Century 1928, can make out wonderful cases for environment using the same material, the Yukes and the Edward's family by which eugeniasts apparently prove the predominance of heredity. Socialologists as a group have been apparently started with the assumption that environment is almost all important. Obviously, if this be true, the responsibility of the

state would rest in amelioration rather than drastic curtailment of the breeding of the catogenic. After quoting a formidable list of authority Tredgold summarizes as follows: "It is quite clear, therefore, that there is now an overwhelming body of evidence from those qualified by experience to express an opinion on this matter to the effect that in the great majority of cases of amentia the condition is due to innate or germinal causes and that it is transmissible."

But what is the nature of this germ defect and how is it transmitted? Not always is the identical defect transmitted from parent to offspring. Usually in fact the ancestors of aments suffer from insanity, epilepsy, dementia, and allied pathological states rather than from amentia. Here is the flaw in existing statutes which require actual evidence of transmission of one type of defect before sterilization is authorized. It is well nigh impossible by ordinary breeding methods to establish the nature of the defect which may have such protean manifestations. Until such a day when controlled human breeding experiments are possible, which seems very unlikely or until the biochemists can analyze the actual composition of genes as Haldane is doing with flowers now we will have no definite information on this complex problem. As an explanation Tredgold has made the hypothesis which is quoted by most authorities. "The conclusion to which I have come is that amentia must usually be regarded as due to a diminished potentiality for development in that constituent of the germ plasm which determines the development of the central nervous system - the neuronics determinant. In many instances the change may be more widespread

and too other tissues of the body are also affected, producing what are known as "stigmata of degeneracy". In other words, the inheritance in amentia takes the form of a neuropathic diathesis, or an innate predisposition to neuronio imperfection."⁽³⁾

Here we have a working hypothesis to which accounts for the interplay of environment on the germ plasm. The commonest circumstance here is some faulty physical condition of the mother during gestation; next probably is premature birth, acting as an exciting or contributory factor. In the same way trauma, convulsions rickets, infectious fevers, meningitis, etc. may act after birth by impairing the nutrition and metabolism of susceptible germ plasm.

The actual nature of this defect is unknown. Some think it atavistic, which is hardly tenable. Most biologists regard it as following ordinary Mendelian laws with feeble-mindedness as a unit recessive character. Tredgold thinks it environmental which is highly heterodox.⁽¹⁵⁾ His reasons are highly interesting in view of Weismann's Law: "It is a inevitable consequence of the theory of germ plasm, and of its present elaboration and extension so as to include the doctrine of determinants, that somatic variations are not transmissible." In biology today we take it as gospel that acquired characteristics are not transmitted, apparently putting this mysterious germinal substance beyond direct experimental control. Tredgold summarized the newer evidence in favor of such possibilities although he carefully does not claim that localized characteristics like nose-slitting, docking of dogs tails, etc. are transmissible. But this is hardly pertinent here be-

cause amentia is not in this category. The basic fact on which all this research depends is "the germ cell must react to and be influenced by its environment." (16) Jacques Loes, the master biologist and most perfect mechanist, (17) also maintained this thesis. Hartog even provided (18) evidence that localized characters may be transmitted. Paul working with lead poisoning, Lize with nitrate of mercury, Fere, Combemabe and Stockard with alcohol all showed the alcoholism in parents can influence the offspring. There are many other experiments cited to prove that germ plasm is not transmittable so we can safely assume that environment does play some part in germinal developemtn. (3) It is noteworthy that chronic diseases especially phthisis plays its part in neuropathic inheritance.

Regarding the actual mechanics of the transmission of (18) the germinal defect we have the statement of Rosanoff and Orr: "It would seem, then, that the fact of hereditary transmission of the neuropathic constitution, as a recessive trait, in accordance with the Mendelian theory, may be regarded as definitely established." This was (19) supported by Davenport and Weeks for epileptics. Tredgold's comment here, although lengthy is most important since his criticism is that keystone of all criticism directed against sterilization. "But the difficulties and sources of possible fallacy attendant upon such inquiries are so great that one must accept these conclusions with considerable reserve. In the first place man is not a very suitable subject for the study of Mendelism at all, owing to the small number of his offspring, added to which so many of the manifestations of the neuropathic

diathesis depend upon the nature of the early education, the physical health, and the conditions and mode of life pursued by the individual, that the precise enumeration of those who are, or are not, affected with hereditary taint is exceedingly difficult. An individual may be the victim of the neuropathic diathesis and yet pass through life apparently normal owing to the absence of the necessary excitant. And a numerical estimate is essential to determine whether this transmission is or is not Mendelian. I am disposed to think, therefore, that many more inquiries will have to be made before these conclusions can be regarded as "established". The utmost we can do at present is to take note of facts, leaving the enunciation of laws until such a time as a sufficient array of facts is available. The following are the facts which have come within my own experience with regard to transmission:

First, that if both parents are healthy and free from neuropathic taint, their offspring is healthy.

Second, that if one or both parents although free from neuropathic inheritance suffer from alcoholism, severe tuberculosis, plumbism (and possibly other poisons) the nervous system of the offspring tends to be more unstable and less durable than that of the offspring of healthy parentage.

Third, that the mating of such neurotic offspring with healthy and untainted individuals may, after a few generations, eradicate the nervous abnormality, but that the mating with individuals of like

constitution tends to produce offspring with an accentuation of the abnormality and an increased predisposition to more serious neuropathic manifestations.

Fourth, that the mating of two individuals of such marked neuropathic inheritance yields offspring in whom there is a definite tendency to imperfection of brain development, or mental defect.

Fifth, that the mating of two mentally defective individuals yields offspring who are all defective. (3)

The following classification from Tredgold is the most satisfactory I have found of the secondary or extrinsic factors causing amentia:

A. GERM VARIATION -

Factors indicative of or producing a variation of the germ plasm.

1. Neuropathic inheritance
2. Alcoholism
3. Tuberculosis
4. Syphilis
5. Consanguinity
6. Age of parents.

B. SOMATIC MODIFICATION

Factors acting directly upon the offspring.

- a. Before (Abnormal conditions of the mother during Birth (pregnancy - 1. Mental, 2. Physical. (Injuries, etc. to the foetus.
- b. During (Abnormalities of labor Birth (Primogeniture (Premature birth.

c. After Birth (Traumatic
(Toxic
(Convulsive
(Nutritional

It should be said at the outset that the figures given by the many investigators in different countries are not uniform but when allowance is made for difference in method there is fair agreement. For neuropathic inheritance the figures vary from 45 to 80 per cent. Alcoholism in 46 per cent, but five-sixths of these had a marked neuropathic predisposition also as well as other marked influences. So alcoholism per se cannot be blamed for feeble-mindedness. Alcohol can act in two ways and unless the father alone is affected it is difficult to tell whether its effect is upon the germ plasma or upon the growing embryo. To date there are too many opinions by biased persons.

Tuberculosis is but rarely the sole cause of amentia, but it has an important indirect or contributory influence. The offspring are more liable to develop nervous instability like migraine, hysteria and neurasthenia. A fact frequently cited by opponents of sterilization is that the death rate of aments is almost four times that of the non-defective population. Whether this is due to their poor environment, special predisposition, lack of resistance, is not known.

Syphilis has never been proved to cause amentia, or even to influence the incidence in neuropathic stock. Like alcohol it may act in two ways, yet many congenital luetics do not suffer mental im-

pairment.

Consanguinity in the lay mind is fraught with dangers of mental and physical deterioration. Much work has been done on this, but there is no evidence to prove that in the absence of neuropathic tendencies that "in-breeding" increases the probability of mental defectiveness.

The evidence that the age of parents may be a factor in causing amentia seems valid, but the statistics will have to be re-analyzed in respect to the presence of a initial neuropathic diathesis.

The physical condition of the mother during gestation especially when of neuropathic diathesis may be of importance in causing amentia. Tredgold found this association in about one-fifth of his cases. The mother's mental state as well as the much debated question of maternal impression does not seem to be of any importance at all.

Injuries to the foetus and abnormal labor have always been considered a frequent cause of amentia. Tredgold feels it is only important as an exciting or contributory cause to the underlying predisposition. The same would hold true of primogeniture, premature birth, and all the causes which are operative after birth.

In the light of knowledge of etiology, it is interesting to see how effective and popular are the various methods of control.

CHAPTER III

RESPONSIBILITY AND STATE RIGHTS - METHODS OF CONTROL.

In the two chapters previous to this I have tried to indicate the nature of feeble-mindedness, its sources, and the magnitude of the problem involved. In the following chapters I shall survey what has actually been done or what might be done. Between the need and the solution of any social problem there are the group opinions which expressed in law and daily usage determine the nature and extent of the solution. It is interesting to speculate on the assumptions underlying many of the arguments about remedies for mental deficiency, especially those relative to the responsibility of the State.

The State, "the body politic", has its justification in being organized for the benefit of its members. Principal of the benefits is the defense against enemies, invasion, attack on its citizens abroad. Maintenance of internal peace, promotion of trade and commerce, education, health, etc. are the most important duties in time of peace. Each government solves these problems on the assumption in which it was granted. We in America are committed to the Jeffersonian doctrine that it is the right of every individual born, regardless of birth or condition, to have the right to "life, liberty, and the pursuit of happiness". This phrasing, apparently rooted in doctrines of the 18th century rationalism especially Rousseau, is also an expression of the Christian doctrine that all men are endowed with souls, the value of which must be determined by other than mundane powers.

Necessity compels a more realistic handling of exigencies

such as feeble-mindedness, because laissez-faire and private Christian charity are inadequate. A conflict arises in whether we will continue on the old assumptions or discard them in favor of new ones. Shall the State regard defectives as privileged and carry the huge burden entailed or shall the State regard defectives as a menace to its own welfare and continue dealing appropriately with them?

The responsibility of the future of defectives is definitely a State problem. The cost of handling them via courts, jails and private charity is clearly greater than when they are taken from the ordinary walks where they clog the normal tempo. Defectives are born from members of the State, most of whom contribute to its support, i.e. the large percentage come from families where the defect is latent, but the family as well as society can well expect relief. Some ailments are so because of poisons, disease, accidents. These can legitimately expect the medical care a paternalistic State provides its unfortunates. Only in cases of clear hereditary caecogenicity could the State refuse to discharge the function it has assumed toward its dependants. But only slowly are groups allowing the State to adapt a more realistic view towards even these self-evident undesirables. Justice Holmes' short decision in *Buck vs. Bell* strikes a new note when he says that we can legitimately ask these people to make a sacrifice as we do of our best stock in time of war. Dr. Guyer, a thorough humanitarian, asks the sentimentalists who plead for the tender care of ailments to consider their power for evil. Our best criminal code does not countenance restraint as punishment any longer; we do not hold that

defectives be punished, even though that interpretation is put upon life long restraint and sterilization procedures, by the opposition. The Supreme Court decision clearly recognizes the right of the State to make demands upon the person of its members in peace time; this is far reaching for many a theology would consider this as wrong. One cannot help but feel that with a greater understanding, a wider permeation of scientific information and less superstition that even more far-reaching eugenic demands will be recognized as legitimate in the effort of the State to fulfill its best function.

The remedies possible "for purging from the blood of the race the innately defective strains" were carefully studied by a committee of the most important men in medicine, psychiatry and all allied fields, appointed by the Eugenics Section of the American Breeders Association at Palmer, Mass. May 1911. Their purpose was: "To investigate all phases of cutting off the supply of defectives and to publish from time to time data which would aid the student of social affairs in weighing any particular phase of the problem that may present itself".

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The possibilities were:

1. Life segregation (or segregation during the reproductive period).
2. Sterilization.
3. Restrictive marriage laws and customs
4. Eugenic education of the public and prospective marriage mates.
5. Systems of matings purporting to remove defective traits.

6. General environmental betterment.
7. Polygamy
8. Euthanasia
9. Neo-malthusianism
10. Laissez-faire.

The committee concluded that the first two were the most practical for immediate and effective results. Regarding life segregation they said: "This remedy must, in the opinion of the committee, be the principal agent used by society in cutting off its supply of defectives. Defectives must be, and with continually finer discrimination are being, segregated from the general mass of society and it will require but little modification from the present custodial systems in effecting the eugenical end as well as protecting the immediate present day society from the socially inadequate individual, and administering to the latter's most pressing needs." We have seen in the first chapter how gigantic this task would be; later the actual methods of institutionalization will be discussed.

Sterilization is so important a subject that I have made a more complete study in Chapter IV. While I am heartily in favor of this measure it has been most interesting to read existing authorities on the many pros and cons on this much debated question.

Restrictive laws and customs forbidding consanguineous marriages are designed to prevent latent defectiveness from becoming evident. In so far as it does prevent this it is a good law but in-

breeding between healthy stocks carries no such dangers. Rather it is urged by some as a certain method of obtaining the best offspring. Those statistics aiming to prevent individuals with syphilis, tuberculosis, etc. from infecting their spouses and children are generally commended. They will be rather ineffective unless the public is conscious of their importance.

Eugenic education is the great hope of men like Dr. Guyer who are in excellent position to know the efficacy of the various plans. Many writers including the committee feel that this method is too slow acting, that it does not reach the people most concerned. Dr. Guyer is very farsighted in his attack. He is not only concerned with the elimination of cacogenic stocks but with general race improvement. His plea, it seems to me, is the only one which will strike the heart of the problem, the gradual elimination of latent defect carriers. As we shall see the greater percentage of aments have only neuropathic heritage not actual feeble-minded ancestors. Since legislation cannot run far in advance of public opinion, it would behoove the more intelligent citizens to promote eugenic education. "Education is necessary before we can have effective restrictive measures for the mentally incompetent established and enforced and it is also a prerequisite to intelligent procedure on the part of normal individuals in considering their own fitness for marriage. Of greatest importance in preventing undesirable marriages, as far as people of normal intelligence is concerned, will be the sentiment of disapproval which will arise on the part of society itself when it becomes really convinced

that certain marriages are inimical to social welfare. Public opinion is, infact, one of the most potent influences in marital affairs, simply because refusal to abide by the dictates of the community means social ostracism. That social disapproval of certain unions can become a very real factor in preventing such marriage is evinced on all sides by the numerous barriers to marriage already in existence based on race, religion, or social status.....It is to such a growth, to the establishments of a disapproval which is the product of its own sentiments rather than to legislative enactments, that society must look for the greatest futherance of the eugen-
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ic program.

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Dr. Guyer considers segregation as too expensive to be the best route for eliminating the cacogenic. Sterilization has too many enemies. "Among the latter it must be said are many competent and thoughtful students who recognize existing conditions and deplore their continuance as much as anyone. They maintain that while we may have to come to it as a last resort, we are yet too ignorant of the actual effects of the operation, or are too little informed on the heritability of the specific traits we are trying to eradicate to launch forth on so radical a program."

Systems of mating purporting to remove or disguise defective traits can be built up on existing knowledge. It would require an ardent eugeniasit however to believe that his knowledge is certain or that the law would grant him the requisite authority. This scheme is too far fetched to be of value.

General environmental improvement is the answer of many sociologists, communists, psychologists and behaviorists. Watson and his followers have made a religion of 'proper conditioning', a method which will solve every ill. Guyer does not believe this to be true; furthermore he raises the logical objection that this defeats the end of eugenics: a better race. Preventive mental hygiene is an admirable and growing science, but if it encourages the reproduction of neuropathic strains should we whole heartedly support it? Remembering the various causes of amentia it does seem as if amelioration of environment would aid in improving the stock, although aments would benefit less than other defectives.

Polygamy was condemned unreservedly by the author-committee, as was enthanasia, neo-malthusianism and Laissez-faire. Enthanasia or infanticide is recommended in Plato's Republic; the ancient Spartans and Chinese practised it. With such approbation it is no wonder that some eugenists suggest that an obstetrician be legally empowered to determine whether a child will be a good citizen and act upon his judgment. Although the idea may seem crude, it may have advantages in those cases where the foetus is obviously deformed or diseased. There are, however, examples in history, as Sam Johnson, Byron, Alexander Pope, Steinmetz, etc. which would be quoted to prove that great minds may exist in deformed bodies, while more sentimentalists would argue that all great art and accomplishments spring from inferiority feelings, so that the real object of lessening the burden of life on the State would be lost in a cloud of emotions. Our exist-

ing conditions would not tolerate this method.

Neo-malthusianism, birth control and continence in married life is too well known to need discussion. The problem is to get those who need it to employ it. Perhaps its effects are more far reaching than we imagine at this time in reducing neuropathic inheritance if not in actual feeble-mindedness.

Laissez-faire can be rapidly dismissed as a failure. Unchecked the inferior stocks will still be a public burden even though their progeny are not as numerous as some men would have us believe.

CHAPTER IV

SEGREGATION - INSTITUTIONS AND COLONY SYSTEM.

Segregation is undoubtedly one of the most effective means of curbing the criminal, reproductive and socially subversive activities of the feebleminded. That it is expensive, reaches only a small percentage of the total, does not improve the mentality, too often does not even train a reasonable number to care for themselves so that release on parole is possible are the usual and unfortunately true indictments. In the light of the history of mental deficiency however much can be hoped for.

In ancient times one reads that idiots as well as other physical defectives are treated realistically, i.e. abandoned as babes because they were a menace to the state. Sporadic instances of Christian charity are cited during medieval times (Bishop of Myra, 4th Century and St. Vincent de Paul in 16th century). Usually they were regarded superstitiously by the natives as either a good spirit or an evil spirit and treated accordingly. Luther and Calvin regarded them as being "filled with Satan", a good example of their emotional attitude. In 1798 the "Savage of Aveyron" (a totally untrained boy of eleven years) was found naked in a French forest. He was studied as a curiosity by Bonaterre. A year later Ibard, chief medical officer in a deaf and dumb school in Paris, had the courage to attempt training this boy, even against the best opinion of the Great Pinel, Physician-in-Chief of the Insane at Bicetre. Dr. Ibard's famous work was thoroughly scientific. Even though he did not achieve

his hopes because of the boy's limitations (Pinel was right, the boy was an idiot) he did lay the ground work for successful treatment of the mentally deficient. In five years of very hard work Ibard developed a rigid program with many novelties whose basic soundness cannot be improved upon today. Sequin, his pupil, is the real apostle of the feeble-minded, however. Devoting an entire lifetime to them he was able to devise innumerable devices to improve their latent deficiencies. Essentially he had a system of sensori-motor training (the present day behaviorism) although he believed that the defect was not inherent but due to "isolation" of a defective nervous system. He followed strict physiological principles in training the senses and the coordination of muscles. His classic work "Idiocy: And Its Treatment by the Physiological Method" contains detailed accounts. Incidentally he was in this country when it was published. A voluntary exile from Louis Napoleon, he worked with Dr. Howe at his Massachusetts School for the Feeble-minded and with Dr. Wilbur at Syracuse; He then served as head of the Pennsylvania School, besides helping organize other schools in Ohio, Connecticut and New York. It is obvious that in 1880 America had the benefit of the very best tutelage in the training of aments. It is a pity that they were not better employed for in spite of his antiquated psychology his methods are still the best for those aments capable of instruction.

When these earlier leaders, notably Howe and Wilbur, found that they could not improve the mentality of aments their followers committed themselves to developing their social qualities in the

hope of making them serviceable. Dr. Fernald of the Massachusetts State School is the accredited leader following Sequin. From 1887 to 1924 he followed Sequin's teaching in the training of his charges with great success. A review of his work is a review of the best opinion and practice of the country to date. He emphasized the necessity of training aments for social adjustment rather than improving their mentality. To this end every available source of information is utilized to discover the potentialities of each subject. Rough classification does not recognize the individuality of each patient without which very little effective rehabilitation could be done. He has developed a "ten point scale" to aid his diagnosis:

1. Physical examination by some physician.
2. Family history from relatives, friends, pastors, etc.
3. Personal and developmental history from any source available.
4. School progress from teachers.
5. Examination in school work.
6. Practical knowledge and general information.
7. Social history and reactions.
8. Economic efficiency.
9. Normal reactions. (22)
10. Mental examinations.

Now a program can be planned and periodic check-up on the same scale gives progress notes which determine future action.

The actual therapeutic and training procedures for the

low grade of idiocy and imbecility includes:

1. Proper nutrition, posture, exercise.
2. Constant and painstaking training in personal matters.
3. Sensory and motor development according to Sequin.
4. Speech training.
5. School classes to watch comprehension
6. Organized and free play.

The upper grades include these and as much more school work as they are able to profit by. The occupational training is naturally emphasized for the higher grade aments. They can do much of the work in the institution as well as being able to go out to earn their own living. All possible vocational activities are taught for both men and women. Naturally only those who are emotionally stable ever get out, even on parole. Again we see that the social factor rather than an abstract intelligence is the deciding factor in feeblemindedness.

The after care or "follow-up" work is an important item in the best institutions. A social worker keeps in constant contact with the cases which have been released so that appropriate measures can be taken when necessary both to defend the ament or the public. It is startling to read that many of those who have had training do quite well when released, both economically and morally. The record of the men is much better than those of the women. Dr. Fernald was among the first to make this discovery that vice, illegitimacy, crime, and many deficient children were at a minimum in his released aments.

It forced him to change many earlier concepts, which he did. His classic summary was "there are good defectives and bad defectives." After training in a good school the good defective can be released to a community which will allow and encourage him to go on as he has been. The responsibility is then upon the community. Dr.

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Wallace of the Wrentham State School in Massachusetts says: "In considering what class of feebleminded individuals may safely remain in the community, it is of more importance to study what communities are safe for the feebleminded.....the number of feebleminded that can safely be cared for in the community is in direct ratio to the supervision that the community is willing to provide."

"The keynote of a practical program for the management of mental defectiveness is to be found in the fact, which seems to have been proved, that those defectives whose defects are recognized while they are young children, and who receive proper care and training during their childhood are, as a rule, not especially troublesome after they have been safely guided through the period of early adolescence!"

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The colony system is one where "any group of inmates hold together under supervision outside the parent institution, while remaining under its jurisdiction and contributing to a greater or less degree by labor to their own support." It was a natural outgrowth from the closed type of institution for both economic and humanitarian reasons. Dr. Bernstein, Superintendent of the Rome State School, New York, was the principal pioneer. In 1915 Dr. Bernstein in the twen-

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ty-first annual report of the Rome State School said: It seems that the time has arrived when we must do other than make the support of the defective and dependent classes a dead load on the State. Instead of asking the State to go on providing beds at \$500 to \$1,000 each (pre war costs) and maintenance at from \$200 to \$400 per year for each of these unfortunate individuals, thus rendering them even more unfortunate because more dependent, we must provide other means of care wherein \$50 to \$100 beds, as in colonies, may be provided..... Also, something more economical and many times more humane than brick and stone walls and iron fences may meet the need."

Since that time there are many colony systems with many innovations added proving that feeblemindedness is not hopeless and may be greatly alleviated as a social problem under an elaborate paternalism. The bulk of colonies are for men on farms but girls domestic colonies are also successful, as are industrial colonies in town for both men and women. They have been used as training schools supplanting the parent institution and thereby increasing its capacity as well as a reward for a good record in the institution and a step towards parole. They form an ideal instrument for permanent segregation of those who cannot be paroled successfully, or can no longer profit by the schools in the parent institution. There is no doubt that with successful supervision the colony system is a "way out" from the white elephant of institutional cost. The details of the care and management are interesting material but do not affect the essentials that in this case the State is exercising a benevolent paternal-

ism toward aments. That they are partially successful in re-establishing some cases raises the question in these competitive times whether the state is justified in this elaborate care when the net result means less jobs for the normal. Can the state legitimately enter into competition with one class against others? So far there has been no reason for strenuous objections but it may be an item of controversy later in our history unless the American ideals of individualism are altered sufficiently to provide paternalistic care for all its members. The recent crisis with imminent bank regulation, power control, etc. point the direction with a moving finger. Perhaps a solution of the present debacle would be a superimposed control either by technicians or responsible members of our established classes upon the incompetent masses. The parallelism is inevitably suggested by these studies; an intelligent caste system could make progress for the good of the whole.

CHAPTER V

STERILIZATION

Sterilization which is one method of decreasing the State's burden of incompetents is rapidly finding favor with the general public. This seems to be due mostly to the insistent propaganda, which is very well advertised with imposing figures and lurid diagrams. The facts presented are often sensational, the conclusions dramatic, making excellent controversial material in home and church as well as legislature. Many prominent people, among them undoubtedly competent geneticists, support the cause, giving it social and intellectual prestige. The loosening of the bonds of belief in matters of church doctrine characteristic of our age allows many who formerly could not have countenanced this idea to embrace it as a substitute for other means of State care. For it cannot be gainsaid that the principal argument which appeals to the average citizen is the one beginning with proof that feeble-mindedness is inherited, that these people reproduce themselves, if left alone, more rapidly than the control groups (often specially chosen) and that the cost of their care is overwhelming. Trained in biology I have always accepted the necessity for sterilization. While still firmly convinced of the social and economic validity of reasons for sterilization I thought that for this paper it would be interesting to see just how well substantiated the scientific evidence is. Does sterilization promise as much as its adherents claim? Are alarmist eugenics supporters right in their assumptions that this single method will stamp out the majority of feeble-minded in a few generations? For to some observers the facts do not seem to warrant the conclusions the

most important of which is to lessen the cost to the state by decreasing the number of incompetents.

We have tried earlier to define feeble-mindedness and show its extents so that some scope of the problem of sterilizing over 1,200,000 people will be apparent. (25) The motive must be strictly a eugenic one, not punitive or therapeutic for the courts will not countenance the first and there is no reason to believe that the feeble-minded are less so by being sterilized. The principal bone of contention is the extent to which feeble-mindedness is inherited. It is apparent from the former discussion that there is no strict definition. The confusion existing between acquired and inherited mental characteristics needs careful scientific investigation before any legislation can be enforced with a reasonable degree of success. Instead of presenting the obvious and superficially correct doctrines in support of eugenics I will state some objections which must be overcome to prove its worth, for the etiology of the mental deficiencies is not understood. How can a social program, any more than medical therapy, be successful when it is aimed at something of which the cause is not known. This would be "shot gun" prescription in government and just as undesirable. Caution is advisable here since recently heredity is being questioned more and more as a cause of mental deficiency, for inflammatory processes, prenatal and post natal, or degenerative changes in the brain as the result of disease and birth trauma are found to be the etiological factor in many cases.

So many arguments are presented by the supporters of eu-

genics that some counter arguments will be cited. To the commonplace that in the near future we will be over run by socially inadequate morons, L. J. Doshay has countered with the Darwinian theory of survival of the fittest. (26) If it be true that the defectives shall inherit the earth, then he concludes that they violate all known biological laws and that mental deficiency is not inherited but acquired to an extent hitherto not realized.

To the belief that the upper social groups, the people in Who's Who and those who graduated from college are not as prolific as the less competent groups of tradesman, artisans, mechanics, one must ask, "are these superior classes really identical with the groups which are mentally, morally, physically superior? How many of the names which find their way into "Who's Who" stand for exceptional native ability? How many have attained notoriety because of favorable economic or social environment? A. M. Carr-Saunders offers the opinion that "there are innate differences between the average level of general intelligence among the members of different social classes and occupations. These differences, while by no means unimportant ifthe members of different classes and occupations increase at different rates, are trivial when compared with the vast differences which exist between the members of every class and profession". Little is known regarding the distribution of mental deficiency and insanity with regard to social class, profession and locality. Raymond Pearl famed biometrician of Johns Hopkins University studied the 1011 people out of 25,000 in the Handy Edition of the Encyclopedia Britannica who received at least a one full page write-up. Eliminating accidents of

political, social, economic influence by studying the group of artists, poets, philosophers he found that an almost negligible number had fathers of importance and a like number had children who became famous. (27)

Surely some higher degree of correlation should be apparent in so great a number of the elect.

The laws governing heredity in man are unknown for no experimentation worth while is possible. The names of Gregor Mendel, Francis Galton, A. Weisman and H. De Vries represent great achievements in eugenics but do not per se support eugenicists like Stoddard, who wrote "Revolt against Civilization", Goddard, who achieved national fame on his work on "The Kallikak Family" and Dugdale and Estabrook who worked up the Jukes family. An analysis of this statistic seem to prove that environment is the great moulding factor for the family histories cited are singularly incomplete. The enormous rate at which our ancestors multiply is staggering. Few of us realize that at the time of the discovery of America we had 16,384 ancestors in one ancestral generation. What if one was a famous man, what were the others? Many might have been idiots, morons, imbeciles, criminals, prostitutes and other socially undesirable people.

A specific criticism of most eugenics propaganda is the assumption that a mental trait is a Mendelian unit character. There is no biologic support for this. Feeblemindedness is a complex of deficiencies, not a single characteristic. Tredgold, the English authority, "suggests that mental traits are neither simple Mendelian unit characters nor complex mental states. He believes that mental

defectiveness is a state of incomplete mental development consequent on the seed having a diminished capacity for growth, or what is called a defective development potentiality, or a vitiation of the ancestral germ cells." He implies that no matter what mental determiners are present in a fertilized ovum supplied by the germ cells of the male and female, the adult which will evolve from it is controlled by the cell's capacity for growth and multiplication and by the ability of the cytoplasm to provide the proper chemical and physical environment for the growth and multiplication of it.

This underdevelopment of the germ cell may vary not only in germ cells of different individuals of the same stock, but also in the germ cells of the same individuals. Moreover, he believes that even if the individual originates in a vitiated germ cell his personality is greatly governed by the nature of the antenatal environment. The result is that although many mental defectives come of families whose germ cells have undergone vitiation, this vitiation shows itself in many other ways than mental defectiveness. It may manifest itself as dementia praecox, manic depressiveness, or other mental disorders. On the other hand this same individual with a favorable antenatal and postnatal environment may pass through life as a normal well conditioned individual.

Perhaps all the psychoses are nothing but neurological conditions rather than combinations of genes in the chromosomes of the germinal cells. Might not even high intelligence and low intelligence be haphazard chance anastomosis of neurones of varied stages of

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development.

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Tredgold's view presented here is attractive in postulating discoverable physico-chemical relations for feeble-mindedness. He does not need either statistical or metaphysical concepts to find causes for amentia. It is a relief to see the fundamental sciences like neurology invoked to aid in future studies on this question. While multiple points of view are valuable in encouraging prolific investigation, I feel that the basic approaches have been far from exhausted in their utility. To the modern novice in medicine, the delicate mental balance hangs all too apparently on structure and the functional limitations of that structure. Pharmacology and endocrinology are furnishing us with many examples of the relation between structure and function. It seems legitimate, therefore, to look to the physico-chemical approach to contribute information about feeble-mindedness which will aid in making a better judgment about sterilization. If sterilization is economically effective and the measure taken as a practical means of preserving the best in the race I would not question the right of the state to enforce it. It is not scientific, however, to regard as evidence that which is not well substantiated and to attempt shaping social destiny in the light of incomplete fact.

Another criticism of the eugenicist's arguments is the very elementary one in logic which every student in biology must learn early and constantly keep in mind: Animals are not men. Cautious experimenters in medicine constantly remind their readers that what may

be true in their experimental animals may not be true in clinical medicine. It has been pointed out that feeble-mindedness has never been demonstrated to be a character trait. Of what avail then are all the arguments illustrating the transference of unit characters in mice, guinea pigs, etc. Even the demonstration of unit characters in men as the Hapsburg lip, hemophilia, color blindness, oto-sclerosis, etc. do not prove that feeble-mindedness is of the same order.

To one reviewing the evidence about sterilization several conclusions may be drawn. First however because to one trained in the biological sciences the evidence in favor of it seems self-evident I have summarized the evidence against it, to attempt an evaluation. This much seems certain: The state has a right to sterilize its defective members.

Mr. Justice Holmes in the opinion written by him in the case which has become a landmark in sterilization legislation. *Buck vs Bell*, (47 Sup. Ct. Rep. 584, 274 U.S. 200) said: "There can be no doubt that so far as procedure is concerned the rights of the patient are most carefully considered, and as every step in this case was taken in scrupulous compliance with the statute, ----- there is no doubt that in that respect the plaintiff in error has had due process of law.

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the state for these lesser sacrifices, often not felt to be such by those con-

cerned, in order to prevent our not being swamped with incompetence. It is better for all the world if instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.....Three generations of imbeciles are enough."

It is fitting that so clear and concise an opinion came from the leading scholar of the Supreme Court. He also has established during a long life time a well earned reputation for liberalism, tolerance and humanity. It is only to be hoped that this spirit will pervade the application of this decision to the mentally deficient.

The following states have laws which are workable and which could be enforced, with exceptions noted. Dates of the passage of the laws and the number of cases to date (1932) given.

Indiana -	1907, 1927, 1931	120 operations.	
Washington -	1909	9 operations.	
California -	1909, 1913, 1917	7548	"
Connecticut -	1909		
Nevada -	1911 - not valid		
Iowa -	1911, 1915, 1929	57	"
New Jersey	1911 - not valid		
New York	1912, repealed 1920	42	"
North Dakota	1913, 1927	33	"
Kansas	1913, 1917	657	"
Michigan	1913, 1923, 1925, 1929	629	"
Wisconsin	1913	248	"
Nebraska	1915, 1929		
Oregon	1917, 1923, 1925	576	"
South Dakota	1917, 1919, 1921, 1925, 1927	37	"
New Hampshire	1917, 1921, 1929	85	"
North Carolina	1919, 1929	21	"
Alabama	1919, 1923		
Montana	1923	35	"
Delaware	1923, 1929		
Virginia	1924	658	"
Idaho	1925, 1929	None	

Utah	1925 1929	79 operations
Minnesota	1925	508 "
Maine	1925, 1929, 1931	42 "
Mississippi	1928	None
West Virginia	1928	"
Arizona	1929	"
Vermont	1931 (voluntary only)	"
Oklahoma	1931	"

The legislation in these states, their history and decisions rendered in court are most interesting. In general it may be said that only hereditary caecogenicity is liable to compulsory sterilization if no criminal offenses are postulated as justification for the operation. Obviously this limits legal sterilization to comparatively few of the many eligibles. Here is the challenge to science to so concretely present the necessity and legitimacy of wider application so that the evidence will withstand assault in court. Many of the laws, especially in all the later ones, there is provision made for legal voluntary sterilization. This is a step forward but not much numerically can be expected of it, in view of existing prejudices.

The three essential features of all constitutionally legal sterilization laws are that due process of law be allowed every candidate, that there is no class legislation involved especially in relation to inmates of prisons, that there is no violation of the Fourteenth Amendment guaranteeing life, liberty and pursuit of happiness. There is also included the protective clause granting legal immunity to those who administer this law and usually a penalty set for those who take part in an operation not within the form agreed upon as due process of law.

There are three famous decisions rendered by courts which shape all sterilization procedures. It is important to mention these, however, briefly to prove the right of the state to sterilize and the limiting factors which now exist. The most famous case is that of *Bock vs. Bill* decided in May 2, 1927. Here the Supreme Court of the United States decided, after reviewing existing eugenic theories and problems, that the Virginia law authorizing the sterilization of mental defectives and others under careful safeguards is not void under the Fourteenth Amendment to the Federal Constitution. This decision is the cornerstone of all other later decisions and subsequent eugenic legislation. It settles once and for all the right of the state to assume responsibility for extensive action in the case of incompetents. The case of *Davis, Warden vs. Walton* decided by the Supreme Court of Utah on April 9, 1929 settled the small differences of opinion which existed regarding the similarity of the Virginia law to the Utah law. The further questions of whether the Utah law was class legislation, whether it was due process of law, whether it provided for cruel and unusual punishment were also decided in favor of state sterilization. The decision is noteworthy in the history of the movement in that it brought out very clearly that though sterilization was constitutional it could only be enforced in those instances where the patient had inherited his insufficiency and would in all likelihood transmit it to his or her offspring. This check demands either direct evidence of hereditary cacogenicity or more reliable scientific data by which a board of experts can convince a court that such action can be taken without the family history. Without such

scientific means of convincing a court the bulk of aments will never be reached except by persuasion. For it is noteworthy that Walton, criminal and sodomist, was never sterilized under the law which the Utah court held constitutional because there was insufficient evidence to prove the hereditary nature of his difficulties. The case of Board of Eugenic vs. Troutman decided by the Supreme Court of Idaho on May 20, 1931 again reviewed the problem of sterilization. It adds nothing new but reinforces the constitutionality of sterilizing aments of proved hereditary origin.

Latent feeble-mindedness will always supply the bulk of the oncoming generations of aments. R. S. Fisher believes that about eleven per cent of the feeble-minded of any generation come from the mating of feeble-minded of the previous generation, while eighty-nine per cent of them come from matings in the latent carrier group.

This raises the serious scientific question as to who is to be sterilized besides the obviously incompetent and defective, for to be really effective latent carriers should become candidates for sterilization also. Could scientific information on this score be obtained and adequately enforced, sterilization would be a marvelous adjunct to the various other means listed by which society can reproduce its best qualities. As it is now we are only sterilizing those who are so palpably state problems that most of them, because of institutionalization in one form or another would not add appreciably to the birth rate of aments. We would only catch minnows instead of the whales that had been hoped for. For it is the hope of the eugeni-

cists to apply sterilization effectively to insanity, epilepsy, degeneracy. I heartily concur in their hopes while aware that much more information is necessary to establish human eugenics as a science. In the meantime Dr. Guyer's plea for education in eugenics should be encouraged so that legislation may eventually keep pace with the best knowledge.

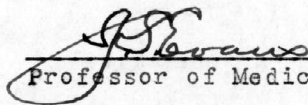
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