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## Sterilization - Scope of the State's Power to Use Sterilization on Mental Defectives and Criminals - Operation of North Dakota Statute

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clear that *Smith v. Oscar H. Wills & Co.*, *supra*, and *Ward v. Valker*, *supra*, show a disposition on the part of the North Dakota court to adopt liberal, non-technical rules with respect to warranties wherever possible. As has been previously pointed out in the *North Dakota Bar Briefs*<sup>66</sup> this is partly because of the recognized public policy in this state of protecting agricultural interests. The logical next step would be a decision overruling or modifying the rule of *Wood v. Advance Rumely Thresher Co.*, *supra*, — a decision out of harmony with this policy — thus incidentally giving North Dakota consumers a clear-cut remedy against manufacturers of defective goods.

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STERILIZATION — SCOPE OF THE STATE'S POWER TO USE  
STERILIZATION ON MENTAL DEFECTIVES AND CRIMINALS —  
OPERATION OF NORTH DAKOTA STATUTE

FEW TOPICS have caused more vigorous debate among members of the legal profession than the operation and effect of statutes providing for the use of sterilization upon mentally defective human beings and upon habitual criminals. Touching, as they do, a fundamental part of human existence, the statutes have been bitterly assailed and vigorously defended by partisans on both sides of the controversy. Despite the attack leveled against them, the use of sterilization procedures has increased rapidly since the first statutes were enacted. Today, sterilization has become one of society's major weapons in the fight to preserve a healthy and intelligent human race.

CONSTITUTIONALITY OF STERILIZATION STATUTES

State statutes concerned with sterilization have been in force since the beginning of the 20th century.<sup>1</sup> The legality of

<sup>66</sup> Nordine, *Sales — Warranties — Disclaimers — Effectiveness as to Variety in a Sale of Seeds by Description*, 24 N.D. Bar Briefs 151 (1948).

<sup>1</sup> The date of enactment of first statute is in parenthesis following the name of the state:

Alabama (1919), statute declared unconstitutional, *In re Opinion of Justices*, 230 Ala. 543, 162 So. 123 (1935); Arizona (1929) Ariz. Code §§ 8-401, 8-406 (1939); California (1909), Cal. Code § 6624 (Deering 1937), Cal. Code § 2670 (Deering Supp. 1941); Connecticut (1909), Conn. Rev. Stat. c. 209 (1918); Delaware (1923), Del. Rev. Code § 3098 (1935); Georgia (1937); Idaho (1925), Idaho Code §§ 64-601 to 64-612 (1932); Indiana (1907), Burns Stat. §§ 22-1601 to 22-1618 (1933); Iowa (1911), Iowa Code §§ 145.1 to 145.22 (1946); Kansas (1913), Kan. Stat. §§ 76-149 to 76-155 (1935); Maine (1925), Me. Rev. Stat.

most of these laws has not been challenged,<sup>2</sup> and many of the laws which have been subject to court review withstood the test.<sup>3</sup> It was several years after the first cases in which the state courts passed upon the validity of such laws that the question came before the United States Supreme Court in *Buck v. Bell*.<sup>4</sup> In that case a feeble-minded woman<sup>5</sup> was to be sterilized under a Virginia law providing for operations using the methods of salpingectomy<sup>6</sup> and vasectomy.<sup>7</sup>

The prerequisites to sterilization were: (1) that the subject be an inmate of a state asylum, (2) that the subject, if discharged from the asylum and not sterilized, would be a menace to society, since if capable of procreation the subject might bear children who would become enemies or dependents of the state, and (3) that if the subject was rendered incapable of

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§§ 158 to 165 (1944); Michigan (1913), Mich. Comp. Laws §§ 720.301 to 720.310 (1948); Minnesota (1925), Minn. Stat. §§ 256.07 to 256.10 (1945); Mississippi (1926), Miss. Code §§ 6957 to 6964 (1942); Montana (1923), Mont. Rev. Code §§ 1444.1 to 1444.8 (1935); Nebraska (1915), Neb. Rev. Stat. § 83-501 (1943); Nevada (1911), statute declared unconstitutional, *Mickle v. Henrichs*, 262 Fed. 687 (D. Nev. 1918); New Hampshire (1917), N.H. Rev. Laws c. 160 (1942); New Jersey (1911), statute declared unconstitutional, *Smith v. Board of Examiners*, 85 N.J.L. 46, 88 Atl. 963 (1913); New York (1912), statute held unconstitutional, *In re Thompson*, 103 Misc. 23, 169 N.Y.Supp. 638 (1918); North Carolina (1919), N.C. Stat. §§ 35-36 to 35-37 (1943); North Dakota (1913), N.D. Rev. Code §§ 23-0801 to 23-0815 (1943); Oklahoma (1931), Okla. Stat. §§ 141 to 146 (1941), a separate statute for sterilization of habitual criminals was declared unconstitutional in *Skinner v. Oklahoma*, 316 U.S. 535 (1942); Oregon (1917), Ore. Code §§ 68-1401 to 68-1412 (1930); South Carolina (1935), S.C. Code § 5009 (1942); South Dakota (1917), S.D. Code §§ 30.0501 to 30.0514 (1939); Utah (1925), Utah Rev. Stat. §§ 89-0-1 to 89-0-12 (1933); Vermont (1931), Vt. Rev. Stat. §§ 10,027 to 10,030 (1947); Virginia (1924), Va. Code §§ 1095h to 1095m (1942); Washington (1909), statute declared unconstitutional, *In re Hendrickson*, 12 Wash. 2d 600, 123 P.2d 322 (1942); Wisconsin (1913), Wis. Stat. § 46.12 (1943); West Virginia (1929), W.Va. Code §§ 1394 to 1400 (1943).

<sup>2</sup> Only 13 statutes have been brought into court for decision as to their constitutionality. They are Alabama, Idaho, Indiana, Kansas, Michigan, Nevada, New Jersey, New York, North Carolina, Oklahoma, Utah, Virginia and Washington.

<sup>3</sup> The Alabama, Indiana, Michigan, Nevada, New Jersey, New York, North Carolina and Washington statutes were held invalid. Indiana, Michigan and North Carolina amended their laws to obviate the former objections. The Washington statute withstood one test based on a constitutional provision against cruel and inhuman punishment, *State v. Feilen*, 70 Wash. 65, 126 Pac. 75 (1912), but fell in a later case, *In re Hendrickson*, 12 Wash.2d 600, 123 P.2d 322 (1942), upon a determination that the statute did not provide for adequate hearing and notice.

<sup>4</sup> 274 U.S. 200 (1927), *affirming*, 143 Va. 310, 130 S.E. 516 (1924).

<sup>5</sup> The defendant was the daughter of a feeble-minded mother and the mother of a feeble-minded child.

<sup>6</sup> The surgical operation used in sterilizing females. It consists of a bilateral ligation or removal of part of the oviducts (Fallopian tubes). Landman, *Human Sterilization* 209 (1932).

<sup>7</sup> The surgical operation used in the sterilization of males. The operation consists of the bilateral ligation of the vas deferens. *Id.* at 207.

producing offspring, he or she might be discharged with safety and become self supporting. The Supreme Court, in an opinion by Mr. Justice Holmes, cited *Jacobson v. Massachusetts*,<sup>8</sup> stating that, "The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes." The decision was that since the operation would promote the subject's welfare as well as the welfare of society, without detriment to the subject's health, and since the proper safeguards, *i.e.*, notice and hearing, were provided for, there was no valid constitutional objection.

Since this decision was rendered only four sterilization laws have been declared unconstitutional,<sup>9</sup> and these were held invalid on grounds unrelated to the authority of the state to sterilize for the promotion of public welfare.

The reasons upon which such statutes have been held invalid are (1) faulty drafting of the statute and (2) technical interpretations of the State or Federal Constitutions. Several of the acts which have been declared unconstitutional have fallen by the wayside as depriving individuals of due process.<sup>10</sup> Here the poor drafting of the statutes comes into play, since the courts have found that there is no provision for proper hearing, proper notice, or right of appeal.

One constitutional objection invoked against the use of sterilization statutes has been that they deprive the individual concerned of his right to life, liberty and the pursuit of happiness, but the courts have held such rights are subordinate to the general power of the state to promote public welfare.<sup>11</sup> Another objection that has been used is that the boards charged with administering the acts have been delegated judicial powers in violation of the doctrine of separation of

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<sup>8</sup> 197 U.S. 11 (1905). This case upheld a Massachusetts compulsory vaccination statute.

<sup>9</sup> *Skinner v. Oklahoma*, 316 U.S. 535 (1942), reversing 189 Okla. 235, 115 P.2d 123 (1941) (habitual criminal statute held discriminatory); *In re Opinion of the Justices*, 230 Ala. 543, 162 So. 123 (1935) (statute did not provide for right of appeal); *Brewer v. Valk*, 204 N.C. 186, 167 S.E. 638 (1933) (statute did not provide for adequate hearing); *In re Hendrickson*, 12 Wash.2d 600, 123 P.2d 322 (1942) (statute did not provide for adequate notice). Statutes that were held unconstitutional before the decision in *Buck v. Bell* did not deny the authority of the state to enact sterilization laws; but prior to that case the state courts took a more narrow view of the provisions of their respective laws. Since then the state courts have distinguished their statutes from the Virginia law or have upheld their statutes on the authority of *Buck v. Bell*.

<sup>10</sup> *In re Opinion of Justices*, 230 Ala. 543, 162 So. 123 (1935); *Williams v. Smith*, 190 Ind. 526, 131 N.E. 2 (1921); *Brewer v. Valk*, 204 N.C. 186, 167 S.E. 638 (1933); *In re Hendrickson*, 12 Wash.2d 600, 123 P.2d 322 (1942).

<sup>11</sup> *State v. Troutman*, 50 Ida. 673, 299 Pac. 668 (1931).

powers.<sup>12</sup> Two constitutional protections usually called upon are the prohibitions against class legislation and cruel and unusual punishment. The objection that sterilization statutes are class legislation has been invariably directed to the fact that most statutes provide only for the sterilization of inmates of state institutions and do not allow the various operations to be performed upon other having like mental characteristics who are members of private asylums or who remain part of society. Some statutes have been held invalid on this ground,<sup>13</sup> but the better view appears to be that provisions applying sterilization laws only to inmates of state institutions make a reasonable classification.<sup>14</sup> As to the provision against cruel and unusual punishment, most courts have held the guaranty inapplicable on the ground that sterilization is not a punishment because it is for the purpose of eugenics or therapeutics or both.<sup>15</sup> In a case where the court found the statute provided for sterilization as a punishment, the court stated that the operation was not cruel within the meaning of a constitutional provision prohibiting only cruel punishment;<sup>16</sup> but under a similar statute it was held in another case that although this type of punishment was not cruel, it was unusual under a constitutional provision against cruel and unusual punishment.<sup>17</sup>

#### STERILIZATION OF HABITUAL CRIMINALS

The cases which hold that sterilization does not promote public welfare and that therefore the state has no authority under the police power to sterilize individuals are concerned entirely with statutes relating to habitual criminals.<sup>18</sup> Much controversy centers about the question of whether the children of habitual criminals inherit the criminal tendencies or mental

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<sup>12</sup> *State v. Schaffer*, 126 Kan. 607, 270 Pac. 604 (1928). Almost every form of constitutional objection was invoked in this case, but the court held the statute valid. The decision stated further that the mere fact that there was no provision for appeal to a judicial tribunal did not mean that there was no due process.

<sup>13</sup> *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Haynes v. Lapier*, 201 Mich. 138, 166 N.W. 938 (1918); *Smith v. Board of Examiners*, 85 N.J.L. 46, 88 Atl. 963 (1913); *In re Thompson*, 103 Misc. 23, 169 N.Y.Supp. 638, *aff'd, sub nom.*, 185 App. Div. 903, 171 N.Y.Supp. 1094 (1918).

<sup>14</sup> *Buck v. Bell*, 274 U.S. 200 (1927); *State v. Schaffer*, 126 Kan. 607, 270 Pac. 604 (1928); *In re Main*, 162 Okla. 65, 19 P.2d 153 (1933); *Davis v. Walton*, 74 Utah 80, 276 Pac. 921 (1929).

<sup>15</sup> *State v. Troutman*, 50 Ida. 673, 299 Pac. 668 (1931); *In re Clayton*, 120 Neb. 680, 234 N.W. 630 (1931); *In re Main*, 162 Okla. 65, 19 P.2d 153 (1933); *Davis v. Walton*, 74 Utah 80, 276 Pac. 921 (1929).

<sup>16</sup> *State v. Feilen*, 70 Wash. 65, 126 Pac. 75 (1912).

<sup>17</sup> *Mickle v. Henrichs*, 262 Fed. 687 (D.Nev. 1918).

<sup>18</sup> *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Mickle v. Henrichs*, 262 Fed. 687 (D.Nev. 1918).

deficiencies of their parents.<sup>19</sup> Although the courts have gone a long way in accepting scientific data as to inheritable characteristics, it cannot be denied that they have excellent reasons for overruling certain habitual criminal sterilization laws. The United States Supreme Court has ruled upon such an act,<sup>20</sup> and although the act was declared unconstitutional upon other grounds,<sup>21</sup> it is plain that the reason underlying the decision was the fact that the statute in question made no provision for ascertaining whether the objectionable traits were inheritable before sterilization. It has been pointed out that criminal tendencies are usually acquired through environment and are not inherited, and that therefore sterilization would only be an indirect cure, in that it might prevent children from being subjected to the type of environment which breeds criminals.<sup>22</sup> Of course, some physical characteristics are inherited which, because of the public scorn to which they subject their possessors, might lead the offspring of criminals to a life of crime much in the same way that environment does.<sup>23</sup>

A distinction is usually made between the ordinary habitual criminal who is convicted of robbery, larceny, burglary or other related crimes, and the criminal convicted of rape, sodomy, and similar offenses. A potent reason for the sterilization of sex criminals is that it may lessen the sex desire to the extent that such a person may be released into society again as a useful and law abiding citizen.<sup>24</sup> The experts disagree, however, as to whether any lessening of sexual desire is achieved by sterilization.<sup>25</sup> Strictly punitive sterilization statutes have no place in a civilized society and should not be tolerated, whether set up for purposes of punishing the ordinary criminal or the sex criminal.<sup>26</sup>

<sup>19</sup> See, e.g., 30 Calif. L. Rev. 189 (1942); 5 La. L. Rev. 124 (1942); 27 Marq. L. Rev. 99 (1943); 41 Mich. L. Rev. 318 (1942); 29 Va. L. Rev. 93 (1942); 51 Yale L.J. 1380 (1942).

<sup>20</sup> *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

<sup>21</sup> The court found the statute unconstitutional on the basis of discrimination.

<sup>22</sup> 30 Calif. L. Rev. 189 (1942); 29 Va. L. Rev. 93 (1942). But see Davenport, *Heredity in Relations to Eugenics* 83 (1915). Dr. Davenport points to inheritance of family traits which seem to tend towards a life of crime.

<sup>23</sup> Davenport, *op. cit. supra* note 22, at 261.

<sup>24</sup> The sterilization referred to is castration.

<sup>25</sup> Gosney and Popenoe, *Sterilization for Human Betterment* 67-69, 93-95, 96-98 (1931). It is generally agreed that vasectomy does not deprive the individual of any sexual impulses. The controversy centers around the use of castration to unsex the individual.

<sup>26</sup> *Ibid.*

### TYPES OF STERILIZATION AND PROBLEMS RAISED THEREBY

Most sterilization statutes provide for operations only by vasectomy and salpingectomy.<sup>27</sup> Such operations have been proved not to endanger the life or affect the future health of the person, nor do they prevent normal sexual relations.<sup>28</sup> The operation of vasectomy is so simple and painless that anaesthetics are not necessary.<sup>29</sup> Salpingectomy necessitates cutting into the abdomen of the female and the period of convalescence is therefore longer.<sup>30</sup> It is worth mentioning that some states provide for castration and ovariectomy, or at least do not prohibit such operations.<sup>31</sup> These operations affect the health and personality of the individual and the use of such operations seems unwarranted when other operations would be as effective.

In the case of sex offenders a more vigorous argument might be made, but in such cases the operation would be primarily performed for its effect upon the person and secondarily upon his fertility. It is believed that in states allowing castration and ovariectomy that permission is obtained from the patient or guardian or both, although the statutes may not require it, and that therefore the constitutionality of such statutes has not been tested.<sup>32</sup>

### THE NORTH DAKOTA STATUTE

The first act relating to sterilization in North Dakota was passed on March 13, 1913,<sup>33</sup> and the present law as incorporated in the Revised Code of 1943 was passed in 1927.<sup>34</sup> The con-

<sup>27</sup> California, Kansas, Nebraska, North Carolina and Utah provide for asexualization. Oregon, South Dakota and Wisconsin do not specify methods of sterilization. Other statutes specify vasectomy and salpingectomy and/or provide definitely against castration and ovariectomy.

<sup>28</sup> Popenoe, *Effect of Vasectomy on the Sexual Life*, Journal of Abnormal and Social Psychology 251-68 (1929); Popenoe, *Effect of Salpingectomy on the Sexual Life*, Eugenics 9-15 (1928).

<sup>29</sup> Landman, *op. cit. supra* note 6, at 207.

<sup>30</sup> *Id.* at 209.

<sup>31</sup> See note 27, *supra*.

<sup>32</sup> Castration is the removal of the testes. Ovariectomy is the removal of the ovaries. Other methods of sterilization are the use of radium, X-rays, electrocoagulation (of the ends of the oviducts or Fallopian tubes), and the use of hormones. The use of radium and X-rays proved unsatisfactory. Sterilization through the use of hormones and by electrocoagulation is still in the experimental stage and if perfected will simplify the sterilization of women.

<sup>33</sup> N.D. Laws (1913) c. 56, N.D. Comp. Laws §§11429 to 11438 (1913). This act included a habitual criminal provision which has been changed in the present law to include only habitual sex criminals. The chapter heading is, "An Act to Prevent Procreation of Confirmed Criminals, Insane, Idiots, Defectives and Rapists; . . ."

<sup>34</sup> N.D. Laws (1927) c. 263, N.D. Rev. Code §§23-0801 to 23-0815 (1943).

stitutionality of this statute has not been questioned. So far as it goes, the present law appears ideal, satisfying all the inherent defects found in acts which have been declared invalid as to appeal,<sup>35</sup> notice and hearing,<sup>36</sup> and providing against its use for punitive purposes.<sup>37</sup>

One part of the statute provides for sterilization of habitual criminals, but only upon those considered moral degenerates and sexual perverts.<sup>38</sup> This section is limited by the general provision that it must be shown that the operation is necessary to "... improve the physical, mental, neural, or psychic condition of the inmate or to prevent such inmate from producing offspring that would become a menace to society or a ward of the state."<sup>39</sup> It is questionable whether operations upon sex criminals would accomplish the objectives sought by this provision.<sup>40</sup> As to asexualation by castration or ovariectomy to cure sex criminals, another matter is of course presented, and the North Dakota statute states definitely that such operations may never be performed except where organs are diseased.<sup>41</sup> Whether any advantage would be gained by providing for such operations in the case of sex deviates is a question which should be decided only after a thorough investigation.<sup>42</sup>

One weakness of the North Dakota statute is that it provides only for the sterilization of inmates of state institutions.<sup>43</sup> This omission detracts from the effectiveness of the statute since most feeble-minded, insane, epileptic, morally degenerate and sexually perverted persons are not confined in state institutions.<sup>44</sup> This weakness is the most apparent drawback of the North Dakota law as it exists today.<sup>45</sup>

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<sup>35</sup> N.D. Rev. Code §23-0808 (1943).

<sup>36</sup> *Id.* §23-0805.

<sup>37</sup> *Id.* §23-0815.

<sup>38</sup> *Id.* §23-0803.

<sup>39</sup> *Id.* §23-0815.

<sup>40</sup> Gosney and Poponoe, *op. cit. supra* note 25, at 69, 93-95.

<sup>41</sup> N.D. Rev. Code §23-0811 (1943).

<sup>42</sup> Gosney and Poponoe, *op. cit. supra* note 25, at 69, 93-95, 96-98. Of statutes providing for asexualation probably the most comprehensive is the Nebraska law. The Nebraska statute has been used infrequently, due probably to the strict provision for punishment of those authorizing and performing a wrongful sterilization operation. The North Carolina law as to asexualation seems to be the most workable. The state of Kansas has had the most asexualation operations performed.

<sup>43</sup> N.D. Rev. Code §23-0803 (1943).

<sup>44</sup> *Sterilize the Feeble-Minded*, Readers Digest 97-103 (May, 1938); Laughlin, *Eugenical Sterilization*, (Historical, Legal & Statistical Review of Eugenical Sterilization in the United States) 5 (1926).

<sup>45</sup> The South Dakota statute seems to contain the best provisions of all the sterilization statutes for the inclusion of all mentally deficient persons, whether inmates of state institutions or not.



The North Dakota statute has been utilized almost entirely by voluntary methods, and the compulsion provided for has rarely been used. The explanation probably lies in the danger seen by those in charge of administering the law that a controversy might result in a court decision invalidating the statute.<sup>46</sup> However, North Dakota has taken advantage of the law through voluntary methods a surprising number of times, and is one of the leading states in the use of eugenic sterilization, based on the number of sterilizations in ratio to total population.<sup>47</sup> An improved statute has been under study by an

<sup>46</sup> See Gosney and Poponoe, *op. cit. supra* note 25, at 35-38, as to why consent is almost always obtained before operating upon individuals in California for the same reasons.

<sup>47</sup> Following is a table illustrating the use of sterilization procedures in the states having sterilization statutes:

States	Sterilization per 100,000 population (prior to 1949)	Number of sterilization operations performed (prior to 1949)
1. Delaware .....	293.9	783
2. California .....	275.5	19,042
3. Virginia .....	200.4	5,366
4. Oregon .....	167.2	1,821
5. Kansas .....	166.6	3,001
6. North Dakota .....	122.3	784
7. South Dakota .....	116.0	745
8. New Hampshire .....	113.4	557
9. Utah .....	100.9	555
10. Minnesota .....	79.1	2,211
11. Vermont .....	69.9	251
12. North Carolina .....	60.2	2,152
13. Michigan .....	56.7	2,982
14. Indiana .....	53.6	1,840
15. Wisconsin .....	52.8	1,658
16. Nebraska .....	52.3	688
17. Montana .....	43.1	241
18. Washington .....	39.4	685
19. Iowa .....	35.1	891
20. Connecticut .....	29.5	505
21. Maine .....	27.7	235
22. Mississippi .....	27.3	596
23. Oklahoma .....	23.6	553
24. Georgia .....	20.3	636
25. Alabama .....	7.9	224
26. South Carolina .....	4.2	81
27. Arizona .....	4.0	20
28. West Virginia .....	2.5	48
29. New York .....	.3	42
30. Idaho .....	.2	14
Total .....		49,207

Although this appears a great number it must be remembered that this amount includes all sterilizations since 1907, when the first statute was passed. In 1948, for instance, North Dakota sterilized only 33 persons, and in 1947 only 17, while some states, like Vermont, sterilized only one person in 1948. In contrast, the law in Puerto Rico was used 986 times in 1948, and in California 326 times. On the average, North Dakota has sterilized 21.9 persons annually since 1913. This is about 4 persons per 100,000, an infinitesimal figure considering that

Interim Committee and was to be reported to the legislature in 1947.<sup>48</sup> Many of the proposed changes would undoubtedly allow further benefits to be obtained from sterilization. An increase in the use of the statute can also be foreseen as the danger of an adverse court decision is minimized.

#### STERILIZATION FROM THE STANDPOINT OF PUBLIC WELFARE

It should be borne in mind that the rigid constitutional guaranties found in the fundamental law of both the States and the Federal Government provide a constant assurance that the use of sterilization in this country will be kept within the bounds of reason and common sense. The necessity for sterilization today is due to the fact that the rigors of life have been softened a great deal since the yesteryears. As a result of new advancements in medical knowledge, the old adage of survival of the fittest no longer holds true, and feeble-minded families multiply at a faster rate than the normal family.

The continued effective use of sterilization depends largely upon the knowledge the public has of what sterilization means, its simplicity and effect, and the public benefit to be obtained by it.<sup>49</sup> It has been said that, "There should be no child in America that has not the complete birthright of a sound mind in a sound body and that has not been born under proper conditions."<sup>50</sup> We should not, in 1950, leave ourselves open to the reproach implicit in the statement of William Penn, more than 300 years ago: "Men are generally more careful of the breed of their

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there are an estimated 7,000 to 8,000 feeble-minded persons in North Dakota. See *Sterilizations Reported to Jan. 1, 1949*, Birthright, Inc. (Pub. No. 5).

<sup>48</sup> This committee was studying, among other improvements in the law, the increase in the application of the statute so as to include all moral degenerates, sex perverts, insane, feeble-minded, etc., whether inmates of state institutions or not; this improvement was to be based upon the South Dakota law. Another law closely related to sterilization, which has been under consideration, provides for the keeping of a continuous record of feeble-minded and insane persons, such as the one in force at present in South Dakota. This law would aid in proving the need for the sterilization of certain individuals.

<sup>49</sup> Undoubtedly a more general use of sterilization would take place if the public knew more about sterilization, i.e., what it is, what it accomplishes, and the effects upon the individual sterilized. The need of a vivid and thorough educational program to bring this knowledge to the attention of the public is shown by the accomplishments of such states as California and North Carolina. A thorough treatment of this entire subject may be found in Gosney and Poponoe, *Sterilization for Human Betterment* (1931). See also Laughlin, *op. cit. supra* note 44, at 2. It should be noted that in many states public opinion has forced the virtual curtailment of any use at all of sterilization laws, especially in Arizona, Idaho, Maine and West Virginia, while many other states have been unable to pass sterilization statutes because of pressure from religious and public groups upon their legislatures.

<sup>50</sup> The White House Conference on Child Health and Protection (1930).

horses and dogs than of their children." The America of tomorrow, after all, depends upon the type of American being born today.

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