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LEGAL AND MEDICAL ASPECTS OF EUGENIC STERILIZATION IN GERMANY

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THE National Socialist Government of Germany has as one of its avowed aims the improvement of the biological and racial qualities of the German people. For this purpose it has undertaken a variety of measures, carried on as part of the public health and social welfare services of the state. These measures are not arbitrary experiments. Every one of them is part of a large, permanent public health program which includes full records as to health and family history and an evaluation of the intelligence and competence of the people. With this goes a eugenic program designed to diminish the transmission of qualities making for lower standards of health, and for lower degrees of competence and well-being among the German people.

In the summer of 1935 the renewal of an Oberlaender Fellowship gave me an opportunity to study this new system, and to compare it with what I had previously seen in 1932. Through the kindness of a friend at the Kaiser Wilhelm Research Institute, I received official permission to interview officials and visit any public service within the scope of my study. This permitted me to observe people's reactions in the farming, industrial, and shipping sections of the country, as well as among various racial groups. I interviewed many leaders, including laymen as well as superintendents of hospitals and institutions, judges of the Hereditary Health Courts, and a large number of physicians, surgeons, psychiatrists, and social workers, who are called upon to give testimony in court and to carry out the provisions of the new laws. Aside from religious scruples, I found relatively few objections to the "compulsory" sterilization law. It is accepted as beneficial legislation designed to minimize the difficulties of those afflicted.

Three out of every hundred Germans are afflicted with physical and mental diseases which are believed to be hereditary, and which seriously interfere with their ability to earn a livelihood. In some sections of the country hereditary feeble-mindedness afflicts about six

out of every thousand inhabitants, according to the reports on children in special schools. This situation has come about as the result of inbreeding, or of emigration of the more capable to urban or foreign regions. To overcome some of the difficulties thus arising, the following measures have been adopted among others:

(1) Marriage loans are offered to encourage early marriages among healthy and intelligent persons by financing new homes for them. The applicants are predominantly office employees and skilled workmen. During the three years that such loans have been available more than half a million couples have received funds from the state treasury, after demonstrating their physical and mental fitness.

(2) Municipalities have become the sponsors of the third and fourth children in the more competent families. Such sponsorship means that the city pays to the parents a monthly allowance of Rm. 30 for the first year and Rm. 20 for the following thirteen years. Special arrangements are contemplated to give the more intelligent of these children unusual educational opportunities at the expense of the community. In Berlin more than 2,000 grants for third and fourth children had been made up to July 1, 1935. A perusal of case histories shows that descendants of some of the most outstanding people in Germany have applied for this type of "honor citizenship."

(3) Subsidies are granted for the children of healthy parents on farms, thus attempting to make up for the deficiency in births among the urban population.

These are examples of measures already in force to counteract the steady downward trend in the competence and intelligence of the people. In putting them into effect, all applicants are investigated as to health and intelligence, family history, character, and integrity. The work is carried on as part of the marriage consultation service, incorporated in the public health and social welfare services of the state.

The decline of births from more than two million in 1900 to less than one million in 1933 awakened the more thoughtful Germans to the dysgenic effect of an indiscriminate reduction of births. One woman in three had a baby in Germany in 1900, while in 1933 only one in ten became a mother, and in Berlin only one in twenty. A family with two children is now considered complete among the more competent citizens, while four or more children are born in families socially less competent. Health and intelligence determine

the value of any people. The present prevailing philosophy, therefore, is that if the social and cultural standards of the nation are to be maintained, the interest of the community must take precedence over individual interests even in very personal matters. Individuals afflicted with diseases believed to be hereditary in origin ought voluntarily and of their own free will to renounce procreation. The more intelligent and the more responsible people have in many instances lived up to such ideals. The mentally incompetent, however, cannot be relied upon to exercise self-control or to practice any control measures designed to limit their families. Hence a sterilization law has been passed.

The German sterilization law is not a hasty enactment, as some people believe. Educational work along eugenic lines goes back four decades. The first sterilization legislation was discussed before the Reichstag in 1907, about the time an American sterilization measure first became law in Indiana. Indeed the legal sterilization of mental incompetents originated in the United States, although sterilization in the interest of public good was begun by Professor Forel in Zurich, Switzerland, some 40 years ago. The leaders in the German sterilization movement state repeatedly that their legislation was formulated only after careful study of the California experiment as reported by Mr. Gosney and Dr. Popenoe. It would have been impossible, they say, to undertake such a venture involving some one million people without drawing heavily upon previous experience elsewhere. The main features of the present German sterilization law were very extensively discussed and approved at a meeting called by the Prussian Ministry of Public Health and Social Welfare in July, 1932, before the present Nazi regime came into power.

Five mental and three physical groups are specifically named as hereditary in origin, and hence come under the provisions of the law. The mental groups are (1) hereditary feeble-mindedness, (2) schizophrenia, (3) manic-depressive insanity, (4) hereditary epilepsy, and (5) hereditary Huntington's chorea. The physical groups are (6) blindness, (7) deafness, and (8) severe physical deformity, so far as any of these are hereditary. The law also covers (9) severe habitual drunkenness. The term habitual drunkard applies legally to a person who, as a result of persistent drinking habits, has degenerated physically and mentally so as to need repeated institutionalization or imprisonment for acts done under the influence of alcohol or narcotics. Such alcoholism is not assumed to be hereditary in the same

way as other items listed above, but there is a widespread belief that a predisposition to alcoholism is inherited. When drafting the sterilization law the legislators were fully aware that the healthy carriers of defective genes and those afflicted with minor mental disturbances or infectious diseases cannot at present be reached.

Application for sterilization can be made by the afflicted person himself, by his guardian in the case of minors and incompetents, by the local public health office, or by superintendents of insane asylums, prisons, or homes for the feeble-minded. Parents, children, and siblings cannot petition for sterilization of a member of the family, nor can any representative of the state, such as a district attorney, mayor, or any other municipal officer, request sterilization proceedings. The state finally decides whether the applicant comes under the provisions of the law. If the patient's physical or mental disease is adjudicated as hereditary in origin, he *must* submit to the operation or subject himself to segregation for the duration of his reproductive life.

The law further provides that the sterilization operation may be carried out as a therapeutic measure, when, according to recognized rules of medical practice, such an operation is indicated. Persons suffering from tuberculosis, venereal diseases, or other conditions not specified in the law, can make application for sterilization through their private physicians. Sterilization without medical or eugenic indication in the sense of the law is looked upon as medical malpractice and would be prosecuted under the German criminal code as mutilation of the body. Court action would therefore be taken against the person upon whom the operation was performed as well as against the physician who performed the operation, and against any instigator of the act. Such action would surely mean heavy fines and imprisonment.

An amendment to the original law was enacted in June, 1935, providing for the interruption of pregnancy, if the woman is adjudicated unfit for procreation by the Hereditary Health Court. The unfitness of a presumptive father, however, is not taken into account because of technical difficulties of proof of paternity before the birth of the child. The mother's consent to such an operation must be obtained. Pregnancies go to term if such consent is not given, and the sterilization operation is then carried out after the birth of the child. This concession was made to counteract accusation of infanticide. Interruption of pregnancy must not take place after the com-

pletion of the sixth month or if the patient's life would be endangered by such an operation.

The German law of 1933 specifies very definitely that the sterilization operation in the legal sense is a severing, resection, or occlusion of the spermatic cords or the Fallopian tubes, not a removal or mutilation of any other parts of the reproductive organs. This regulation, however, was modified a short time ago, permitting irradiation by means of X-ray or radium to be used in specific cases. In common with many other states, Germany has enacted statutes for asexualization. This legal provision has no relation to eugenic sterilization, and is resorted to in cases of repeated sex delinquency and mainly as a therapeutic measure.

Executive orders designate that the operation of sterilization can be carried out only by competent surgeons or gynecologists and in specially equipped hospitals. It is believed that sterilization has no ill effects on health. It does not interfere with the endocrine balance and it does not affect sex desire or response.

In cases where discharge from an institution or prison is contemplated, the Hereditary Health Court must hand down its decision and the sterilization must be performed before the inmate can leave the institution or prison. This procedure differs, therefore, from the practices in the United States, where in some states persons permanently institutionalized are sterilized. Court proceedings are expensive, because medical examinations, family history investigations, and possible hospitalization for observation take at least three months. They involve a considerable amount of work by public health and social welfare offices apart from the testimony of medical specialists and other witnesses. It seems futile, inhuman, and unnecessary to subject a person to an operation for sterilization if segregation is to be his lot throughout his life, unless institutionalization is not meeting one of its chief functions—that is, the prevention of procreation.

Hereditary Health Courts, known in Germany as the "ERBGE-SUNDHEITSGERICHT" were specially established in January 1934, for the sole purpose of handling cases in which application for sterilization had been made by the District Public Health Office. Each court has three judges; a district judge acting as presiding officer, a public health officer, and one additional physician who in most cases is a specialist known to be competent in medical genetics. The district judge is selected for his familiarity with problems and

procedures pertaining to the guardianship of minors and incompetents and the procedure of the Domestic Relations Court. At present it is at the discretion of the Court to request the presence of the "Proband," or person whose physical and mental health and family history are in the process of investigation. There is considerable difference of opinion as to this, because the appearance of feeble-minded or mentally afflicted persons before the court involves difficulties of supervision, transportation, etc., and is therefore a considerable expense to the state treasury, which shoulders all costs of the court actions.

Through the District Public Health Office, the "Proband" or his legal guardian is notified of the decision handed down by the Court. The written notice contains the reason for the decision and for the order of execution. The right of appeal to a higher court, the Hereditary Health Court of Appeals (in German the ERBGESUNDHEITSOBERGERICHT) can be exercised for a period of two weeks. A written application for appeal must be filed in the District Public Health Office. The Court of Appeals reviews the whole case and then renders the *final* decision.

If no appeal is made, the "Proband" adjudicated to come under the provision of the law must, within two weeks from the date of notification, report either to one of the hospitals selected to perform the operation, or to an institution for segregation. Non-observance of the regulations and orders brings police action. There has, however, been little need for this.

The 205 Hereditary Health Courts and the 26 Courts of Appeals did a sizable piece of work during their first year.¹ For 1934, 84,525 applications for court proceedings were made and in 64,499 cases, or about 73 percent of the total number of applications, decision was handed down by the Hereditary Health Court. The sterilization operation was ordered in 56,244 cases (28,286 male and 27,958 female). In 3,692, or somewhat over 2 percent of the decisions, the illness was found not to come under the provision of the law mainly because of the hereditary aspect of the disease, and 4,563 cases were otherwise disposed of.

The Hereditary Health Court of Appeals handled 8,219 cases, or 14.6 percent of the decisions of the lower court. In about half of the total (4,559) the reasons for the appeal were found invalid after

¹ Massfelder: "Die Erbgesundheitsgerichtbarkeit im Jahre 1934", *Deutsches Aertzeblatt*, Aug. 1935, pp. 742-3.

careful study of all data. Appeals were made both on behalf of the "probands" and of the officials or others who brought the action for sterilization. There were 438 appeals requesting a review of the case because the Hereditary Health Court had decided that the person's illness did not come under the provisions of the law, and sterilization could not be undertaken. In 179 of these cases the Court of Appeals reversed the decision of the lower court and ordered sterilization.

Upon admission to the hospital the patient is subjected to a careful medical examination including Wassermann, urinalysis, and blood tests. The surgeon or gynecologist in charge of the hospital must make an appeal to the District Public Health Office and ask that sterilization be delayed if previously undiscovered diseased conditions are found which might endanger life or interfere with healing and convalescence. Persons afflicted with tuberculosis, diseases of heart, kidneys, and pelvis would fall into these groups. The pre-operative period of observation is about four days and the post-operative hospitalization ranges from seven to ten days for men, and from twelve to eighteen days for women. The final discharge of mental cases from institutional care is set at a date allowing sufficient time to recover from disturbances that might result from the anticipation of operation, or from a possible shock.

The average duration of the operation for men is between six and eight minutes, and it is mostly done under a local anaesthetic. With the women it is a more extensive operation, involving the opening of the abdomen, and must, of course, be performed under ether. Due to perfected operative technique in clean cases, there has been a remarkably small number of cases with post-operative complications. The mortality reported among the women is quoted to be 0.4 percent, a remarkably low rate because the mortality of clean laparotomy cases usually ranges around one percent. The low mortality is due: (1) to the utmost care in not subjecting patients to an operation when they are diseased; (2) to a brief and relatively simple procedure; and (3) to the group as a whole being physically healthy persons.

The cost of operation and hospitalization is borne by the afflicted person, or by the Sickness Insurance Fund, or in the case of public charges by the State Board of Social Welfare. Expenses for institutionalization for the duration of the reproductive period have to be borne by the individual or his family, or by privately financed charity. Up to July 1, 1935, some 150,000 persons had been sterilized

in Germany. Nearly one half of the group sterilized to date are congenitally feeble-minded. It is estimated that among the million mental defectives in Germany more than half came under the provisions of the law.

The present law makes no provision for sterilizing the asocial groups of criminals and habitual paupers who also are a serious handicap to any nation. No doubt subsequent amendments to the law will sooner or later include a number of other diseases and asocial characteristics when more is known about the essential hereditary factors. The social aspect is considered only in the cases of severe habitual drunkenness, where it takes account of the bad environmental influence on the family. In the case of hereditary deformities, the law is limited to those of a sufficient degree to interfere with normal life and capacity for earning one's livelihood.

Information relating to disease and abnormal conditions existing in a family is comparatively easily obtained in Germany, especially in the rural sections. People move little from place to place; residence registration is required of every one; and the holding of citizenship in a specific municipality and the school registration of all children over six years of age facilitate fact-finding procedures. A temporary withholding of information is of little value because of the ultimate coming to light of the real situation. Prosecution under civil law can impose fines and imprisonment for withholding the information.

In conclusion it may be said that, as in all such far-reaching changes, one can readily understand that opposition and difficulties of all sorts are encountered, but there is little doubt that sterilization of those unfit for procreation is a constructive social measure so far as it helps the afflicted person to avoid increasing responsibility which he and society have already found burdensome. All possible precautions and safeguards are taken to forestall miscarriage of justice in whatever form it may occur. Special courts were established with judges and alternates appointed for their highly specialized qualifications by the State's supreme government. Each local political district has its Hereditary Health Court with jurisdiction over its cases.

All notifications and applications have to be made in writing and must be substantiated by medical opinion. When application is made by a physician, it is assumed that the application is in accordance with his medical opinion, while a layman must submit a written

medical opinion supplemented by a statement that the applicant is familiar with the meaning, purpose, and effect of the law.

No medical, legal, or governmental person can serve on more than one body rendering a decision on a case. This is chiefly a precautionary measure to forestall malicious attempts against an individual. Proceedings of the Hereditary Health Courts are not public. All data relating to the individual or his family are zealously guarded as strictly confidential, because medical, legal, and governmental witnesses are obliged to divulge necessary information regardless of the tenets of professional secrecy. Hospitals and physicians eligible to execute the court decisions are specially designated by the State government, and they are selected on the basis of their ability.

Sterilization operations are authorized and may be performed only in a hospital by a physician licensed to practice in Germany, and one equipped with special training for this type of service. Under the present regulations, only the surgeon or the gynecologist in charge and his first assistant are allowed to operate.

The severing, tying, or resection of the vas deferens or the Fallopian tubes are the only operative measures allowed under the provisions of the law. Removal of sex organs due to diseased conditions would have to be considered in the light of their therapeutic aspects, supported by a specialist's testimony. Sterilization by X-ray and radium irradiation is permissible in selected cases only, because the possibilities of disturbance in the endocrine system, in later conceptions, and so forth, do not warrant an exposure of a patient under a "compulsory" law.

The operating physician must send to the District Public Office a written report of the method of operation, the course of convalescence, and possible mental and physical complications. Persons participating in any capacity in the proceedings of the court or subsequent operative procedure are obliged to maintain secrecy. Failure to do so makes a person guilty of breach of confidence subject to imprisonment up to one year, or to a money fine.

The present law is conceived with a desire to help the afflicted person to avoid increasing responsibilities already found to be onerous. The sterilization of the persons adjudicated unfit for procreation is not administered as a punitive measure. The carriers of diseased genes and the asocial groups of criminals and paupers do not come under the provisions of the present law, as it only reaches persons

who are ill or have been suffering from the group of diseases specifically indicated under the provisions of the law.

From these personal observations I am convinced that the law is administered in entire fairness and with all consideration for the individual to be sterilized and for his family, and that discrimination of class, race, creed, political, or religious belief does not enter into the matter, regardless of whether health, social welfare, or legal procedures are involved. I say this with confidence because I had a rare opportunity to examine case histories in large numbers in various sections of the country and the still more rare opportunity to familiarize myself with the proceedings of the Hereditary Health Courts.

No one seriously believes that sterilization will eradicate all mental diseases, for many causes of such diseases are environmental in origin. A great task will have been accomplished if, in two or three generations, fewer feeble-minded must be cared for. It would be most unwise to pass judgment on the sterilization measures in Germany or in any other country until we have more data on the merits of voluntary versus the compulsory laws, and on the mental and physical adjustments of the sterilized persons to their families, to the community, and to their general environment. The German legislation, apart from the eugenic aspects, is a great step ahead as a constructive public health measure, as a method of preventive medicine, and as a contribution to social welfare.

Justice Holmes, when handing down the decision in the *Buck versus Bell* case, expressed the guiding spirit of a truly constructive social policy for any country when he said: "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."