EUGENIC STERILIZATION LAWS IN EUROPE*

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STERILIZATION is a recent addition to the armamentarium of preventive medicine, and it is the United States which has pioneered in the development of eugenic sterilization for those unfit for procreation by virtue of severe hereditary afflictions, as the first statute in the world was enacted in the State of Indiana in 1907. There are now 28 states in the Union with a similar provision written into the statutes. America therefore served as example to the rest of the world.

Closer attention to the background of European laws, the oldest of which is but seven years old, reveals that sterilization was advised on eugenic and therapeutic grounds as far back as 1892 by Dr. August Forel in Zurich, Switzerland. Forel initiated the 1901 *Swiss Law for the Protection of the Insane and Feebleminded* which authorized physicians to employ whatever therapy they deemed necessary to improve a patient's condition.

In Germany, there were sterilization bills before the Prussian Legislature in 1903, before the Saxon Legislature in 1923, and before the Reichstag in 1907 and 1925. In addition, most of the preliminary work was completed for the enactment of the present sterilization law before the political upheaval occurred early in 1933. The first European law was passed in 1928 in the Swiss Canton de Vaud, and was followed in quick succession by Denmark in 1929, Germany in 1933, Sweden and Norway in 1934, in Finland and Danzig in 1935 and in Esthonia in 1936. The Swiss enactment was particularly noteworthy in view of the well-known Swiss opposition to legislative regulation.

In ten other countries sterilization on eugenic grounds has been or is being discussed before the legislatures, and enactment is expected in the near future.

The sponsorship of eugenic sterilization legislation in Europe emanated from each medical group, as the psychiatrists, obstetricians, public health officials, and from the social welfare boards.

The German law is based on thirty years of research in psychiatric genealogy under the leadership of Dr. Ernst Ruedin. The German Psychiatric Research Institute in Munich has undertaken extensive studies of the incidence of diseases believed to be hereditary in origin. A most fertile field for study has been the northern slopes in the Alpine region, Switzerland, Bavaria and western Austria, a well-known goiter area. It is on the basis of such investigations that the German Legislation specified the hereditary condition serving as indication for eugenic sterilization under the 1933 Law. These are the hereditary

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forms of feeblemindedness, schizophrenia, manic-depressive psychosis, epilepsy, and Huntington's chorea in the mental group; and deafness, blindness and severe hereditary bodily malformation in the physical group of diseases.

On the basis of a vast amount of case material gathered in Germany and elsewhere, Ruedin's prognostication of the probable recurrence of disease is illustrated in the following few samples. In the case of one parent affected by hereditary feeblemindedness, at least one child in three may be feebleminded, and only an exceptional issue will not be feebleminded if both parents are thus affected. Likewise he believed that 9 to 10 per cent of the issue of one schizophrenic parent may be schizophrenic, while 17 per cent will be the schizoid type of individual and 22 per cent may be affected by other types of abnormality. At least one-half of the offspring inherit the disease if both parents are schizophrenic and in addition nearly one-third of their issue will be schizoid individuals. In manic-depressive psychosis the incidence of recurrent disease when one parent is affected will be about one child in three and an additional one in six will be a cycloid psychopath and nearly one in eight will be affected by other types of abnormality. Studies from Sweden show that two out of five offspring of deaf-mutes inherit the disease from their parents.

Studies of this kind exemplify the type of factual data which underlie the recent sterilization legislation in Germany. Medical opinion here and abroad is divided on the validity of some of the assertions of Ruedin and his followers. Final judgment must await the gathering and presentation of factual data on a scale which will permit definitive conclusions.

The foregoing figures show clearly that the problem of the hereditary transmission of disease is a formidable one, which offers large scope for medical science. The proportion of individuals who, because of hereditary conditions, are unable through their own efforts to provide for themselves and their offspring is conservatively estimated at 3 per cent in any population. Such proportions reflect the continued inbreeding of persons afflicted with hereditary diseases and are accentuated by the emigration of more competent elements in the population to more favorable areas.

The proponents of European sterilization argue that propagation of the unfit can be prevented by no means other than sterilization, for this is the only reasonable and humane way to limit offspring without requiring the intelligent and voluntary cooperation of the parents. Intelligent voluntary cooperation, they say, is not to be expected of the great majority of persons thus afflicted. They also point out that the public is gradually coming to demand that physicians sterilize individuals for a variety of reasons which are not wholly medical. Under the criminal laws in most European countries, sterilization would be considered a mutilation of the body despite its having been performed at the patient's request. It has, in fact, recently resulted in the prosecution of physicians in Graz, Austria; in Offenbach, Germany, and in Bordeaux, France. It is held that the physician is entitled to legal protection. Those who favor sterilization point out that funds are required for the hospitalization of those suffering from severe hereditary diseases, and for the maintenance of their families. These are social costs upon the commonwealth, and are of sufficient magnitude to warrant an interest

in their reduction. Without expensive segregation, the unsterilized mental defective easily falls prey to unscrupulous individuals. There is, finally, the basic eugenic argument used by adherents of sterilization, that the quality of the population is subject to deterioration if the propagation of the hereditarily unfit is allowed to continue unchecked.

Such views have been sufficiently prevalent in Germany and in the Scandinavian countries to force the passage of sterilization legislation. Measures to "render a person unable to propagate" are to be undertaken in the interest of the "public good," in the wording of several of the laws. Hence, most of the laws are aimed at those hereditary diseases which seriously interfere with ability to provide for subsistence and to make the expected adjustments of modern life. In some countries the issuance of marriage licenses to epileptics, deaf-mutes and adult feebleminded, with a mental age of nine or less, is made conditional upon their previous sterilization. The German law limits the indications for sterilization to those specific disorders in which they believe that transmissions to offspring will result, except that it also includes habitual drunkenness. The latter is defined as a state of such persistent and severe alcoholism that the patient requires repeated institutionalization or imprisonment for his behavior while under the influence of alcohol. The severe physical malformations mentioned in the German legislation are those which seriously interfere with locomotion and those which are grossly offensive.

Some laws specify that only the individual with an "incurable" hereditary disorder, and whose progeny would in all probability be similarly afflicted, may be sterilized, while others assert that the "preventable" and not the "incurable" quality of a hereditary disease makes sterilization desirable. The proponents of sterilization argue that the most extreme cases of mental disease require institutionalization in any event, whether from the point of view of the individual or of the community, and hence do not need sterilization. In some countries only the individual technically a public charge comes under the provisions of the law. In others the outward manifestation of a hereditary disease and the ability to procreate determine the issue. In a third group, carriers of diseased genes in badly affected families, and persons affected with noninheritable diseases, can avail themselves of the provisions of the law.

While taking full account of the hereditary aspects of mental and physical diseases and abnormalities, the sterilization laws do not, as a rule, cover persons suffering from infectious diseases, or such asocial individuals as criminals and habitual paupers. Nor do they apply to those individuals whose mental and physical condition prevent their returning to life in the community and necessitate continued segregation. The sterilization of institutionalized individuals would be an unnecessary strain and expense, unless institutionalization failed to prevent procreation. In Germany the individual adjudicated unfit for procreation, who for religious and other reasons objects to sterilization, has the alternative of segregation for the period of his reproductive life and in a state-supervised institution. The age of puberty determines in most countries the lower age limit, while the upper age limit for women ranges from thirty-eight to forty-five and for men from sixty on.

The social-eugenic laws in Norway and Finland, and the criminal laws in Germany and Denmark contain legal provisions for the castration of

extreme sexual delinquents or persons of marked sexual abnormality, but this is a therapeutic measure which is utilized as a last resort when all others have failed.

Sterilization for therapeutic reasons on strictly medical grounds is left to the judgment and discretion of the attending physician. Only the German law provides that sterilization carried out for therapeutic reasons must be recorded at the District Public Health Office, as a safeguard in case of later manifestation of the hereditary disease against future action on the part of the state under the sterilization law.

Sterilization for the sake of convenience, that is, for humanitarian social and economic reasons, is legally recognized in some countries, while others characterize such an operation as a criminal offense on the part of both physician and patient. Where the law permits, therefore, the physician is free to grant a patient's request for sterilization on almost any reasonable ground.

The European machinery for sterilization has been planned to minimize the abuses of the legal right to perform the operation. The written application for sterilization may be made by the individual who desires sterilization, or by a guardian on behalf of a minor or an incompetent. Under the latter designation are included superintendents of public institutions for the feebleminded, the insane, and the criminal. In the Scandinavian countries and in Switzerland members of the petitioner's family may file the application, whereas under the German law this is not possible except in the case of a member of the family who has been appointed as legal guardian of a minor or an incompetent. This prohibition also extends to representatives of the state, e.g., the district attorney, the mayor, or any other representative of the domiciliary or municipal government.

Without exception the European laws stress the point that the applicant for sterilization on his own behalf, or on behalf of another person, must be thoroughly familiar with the character, purpose, and effects of the operation. The laws then require that the local medical officer make a careful study and report on the health of the petitioner, his mental development and hereditary background, the nature and course of the disease, the environmental circumstances and other contributing factors.

The European laws enacted to date emphasize the voluntary spirit with which it is desirable to have the petitioner make his application, submit to careful investigation, and follow out the decision made in his case.

However, the German law provides for the compulsory sterilization of those hereditary defectives who are unwilling or unable to seek sterilization, unless they choose segregation in state-supervised institutions. The law in each other country is compulsory only with respect to public charges who do not need permanent institutionalization on other grounds. A public charge as defined under the European civil laws is an individual whose partial or entire maintenance is defrayed from funds of the commonwealth of domicile or from that in which he holds rightful citizenship. Under the provisions of the Social Welfare Acts on the continent of Europe, collateral relatives can be held responsible for the cost of maintenance of a kin in the ascending or descending line, as well as for blood kin of first and second degree.

In charge of the investigation in each country is the Department of Public Health which is responsible for filing petitions for sterilization proceedings. The inidvidual decisions are made in the name of the commonwealth after independent referees and special witnesses have been heard. Thus the operating surgeon or gynecologist is relieved of the responsibility of decision under the eugenic provisions of the law.

In the Scandinavian countries and in Switzerland the authority for such decisions rests with the Departments of Public Health and Social Welfare, while in Germany it is in the hands of the specially constituted Hereditary Health Courts. Actual decisions are usually made by small boards, committees, or courts with four to six members: a lawyer familiar with the routine of the Family or Domestic Relations Courts; a psychiatrist; a physician trained in medical genetics; and one or more physicians from general practice or engaged in various specialties.

The German law provides that no medical, legal, or governmental official may serve on more than one body rendering decision on a given case. This stipulation has been drawn to prevent conspiracy against an individual. The sterilization proceedings and hearings are not public, and all relevant data are held confidential, since medical, legal, and governmental witnesses are obliged to divulge information without constraint. Failure to maintain secrecy is punishable by fine or imprisonment. Most of the European laws provide for appeals from the decisions made by the responsible authorities.

Sterilization operations must be performed in hospitals approved by the Department of Public Health. Such hospitals must not only be equipped with adequate facilities for operation, but must also be prepared to care for mental cases during the period of convalescence. Only surgeons and gynecologists licensed to practice as "specialists" in their fields are allowed to operate.

The sterilization laws customarily require that the operation follow the decision as soon as possible. The German legislation specifies that no person may be subjected to sterilization if the operation would endanger his life. It is partly for this reason that all admissions for sterilization are given thorough medical examinations and diagnostic laboratory tests. If the surgeon in charge of the hospital believes sterilization to be inadvisable because of previously undiscovered disease, or because the success of the operation might be jeopardized, the law permits a postponement of the operation.

The operative technique is determined by the surgeon, who is thus free to use the method most familiar to him. The law specifically states that the method of sterilization shall be operative, except that irradiation is upon special indication permitted for women over thirty-eight years of age. Legally, the operation is understood to be a severing, tying or occlusion of the vas deferens, or of the fallopian tubes, but not a removal or mutilation of any other parts of the reproductive system. The operation must not interfere with endocrine balance or with sex desire or response. In all European countries a written report on the method of operation, the course of convalescence, and on the subsequent mental and physical state of the patient must be filed by the surgeon with the Public Health Office.

In European medical and psychiatric circles it is argued that, with operative procedures conservatively limited to the severing, tying, or occlusion of the vas deferens or of the fallopian tubes, the after-effects

of the operation resemble those of physiologic sterility from disease or other causes. It is, therefore, believed that mental and physical disturbances are highly unlikely sequelae of sterilization, as it is being performed under the law.

The costs entailed by the sterilization proceedings, the operation and the hospitalization, are borne by the institution normally charged with the care of the defective individual. In Germany, all legal proceedings are the financial responsibility of the State; the charges for operation and hospitalization are paid by the individual, the sickness insurance fund, or by the Board of Public Welfare. The sickness insurance covers a minimum amount above which the individual is responsible. The cost of institutionalization in Germany of those individuals who object to sterilization on religious or other grounds must be paid by the individual, his family, or by friends, and is never paid by the State.

Reports on the application of the Danish law show that 127 individuals have been sterilized since 1929. In the Canton de Vaud, Switzerland, 48 operations were performed during ten years before the enactment of the law in 1928; from that date until January, 1935, 46 additional operations were performed. In other Swiss urban centers, where there is no restrictive legislation, such operations are more frequent. In Germany, since the law went into effect on Jan. 1, 1934, the 205 Hereditary Health Courts have adjudicated more than 200,000 candidates for sterilization. The vast difference in these figures, even on a per thousand of population basis, measures some of the difference among the various laws as regards the scope of their compulsory features.

Experience with sterilization has been altogether too limited to furnish a factual basis for discussing the relative merits of voluntary and compulsory sterilization.

Increasing urbanization and mobility of the people, resulting in the location of families in new surroundings where they are not known by their neighbors or by the authorities, present a serious problem. This is the fundamental reason for the much discussed and often resented legislative regulations of many personal matters.

Here I may add that sterilization of those deemed unfit for procreation because of hereditarily conditioned defects is only one part of a program to improve the competence and health of the people. The European legislation movement to make the issuance of a marriage license conditional upon prenuptial medical certification will be, it is believed, the most effective single educational measure to improve the health standards of the people.

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