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## **“An Act to Prevent Procreation of Confirmed Criminals:” The Origins of Sterilization in Indiana**

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During the 19<sup>th</sup> century, some in the scientific community began to embrace eugenic principles. Eugenics was a movement with a strong commitment to improving the human race by weeding out the unfit. Based on eugenic principles, laws were passed that legalized sterilization in many states throughout the country. Sterilizations were performed on both men and women that were deemed to have inheritable “degenerate” traits, such as the insane, criminal or mentally infirm. The argument made in favor of sterilization stated that degenerate people needed to be sterilized in order to prevent future generations from inheriting bad traits. It was seen as sacrificing one person’s rights for the good of the rest of the population. Those that were targeted to be sterilized were usually living in prisons or mental health institutions. Future generations descended from degenerates would only serve to keep the population of the institutions high and continue to be a drain on taxpayers. As laws began to be passed throughout the country, a debate was created over whether or not the government could take away an individual’s reproductive rights.

In order to understand the history of sterilization and its impact, it is important to examine its origins. The first legislation legalizing sterilization was passed in 1907 in Indiana. This law came about in response to the perceived threat posed by hereditary criminality. In this paper, I will argue that the idea of heredity as understood by eugenicists made forced sterilizations appear to be a legitimate way to reduce new cases of degeneracy and led to the passage of the country’s first sterilization law in Indiana despite the many constitutional issues such a law presented.

### **The Eugenics Movement**

The effort to sterilize degenerates and criminals was a part of the larger eugenics movement. In its most basic sense, the idea of eugenics is to create the strongest human population possible through better health and lifestyles. Eugenics is the “conscious selective improvement” of the human race.<sup>1</sup> While the idea of improving the human race has been around since ancient times, the modern eugenics movement in the United States dates back to the mid-1860s. The eugenics movement

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<sup>1</sup> James A. Field, “The Progress of Eugenics,” *The Quarterly Journal of Economics* 26(1), (1911): 2.

rose during this time due to the influence of the 1859 publication of Charles Darwin's *On the Origin of Species*, in which Darwin described how various forms of life underwent evolutionary changes in order to survive.<sup>2</sup> Soon, eugenics pioneers such as Sir Francis Galton were using Darwin's ideas about heredity to create their own studies on human intelligence and characteristics.

Eugenicists began to study human populations to examine how traits were passed on from generation to generation. In order to improve society, some eugenicists began to study undesirable human traits in an attempt to determine whether or not these traits were inherited. Oscar McCulloch, a Congregationalist minister from Indianapolis, performed a study of the hereditary traits of the Ishmael family in 1878. McCulloch encountered a branch of the family that was living in abject poverty. He discovered that there were many branches of the Ishmael family that he identified as degenerates and traced the perceived negative traits back several generations.<sup>3</sup> McCulloch's study of degeneracy was but one of several major studies that were used to support the idea that degeneracy was an inheritable trait.

Influenced by the studies purporting to show that degeneracy was an inheritable trait, scientists and doctors began to look into ways of preventing degenerate offspring. Dr. A.J. Oschner, a surgeon from Chicago, came up with the first practical solution for men, a procedure called the vasectomy. Oschner performed his first vasectomy in 1897 and reported it to be an easy and safe procedure that rendered a patient sterile.<sup>4</sup> As word spread of Oschner's success, other doctors began to use this procedure, including Dr. Harry Sharp of Indiana. Dr. Sharp used the vasectomy as a treatment method for incarcerated men at the Indiana Reformatory.<sup>5</sup>

Dr. Sharp performed many vasectomies and successfully lobbied to get a sterilization law passed in Indiana in 1907. He became a national figure in the sterilization movement and marketed his "Indiana Plan" to other states. An increase of pro-sterilization literature began to appear in leading scientific and medical journals as well. As a result, eleven additional states enacted sterilization laws between 1907 and 1913.<sup>6</sup> Prominent eugenicists such as Harry H. Laughlin, Arthur Estabrook and Charles B. Davenport published literature and books promoting sterilization, further expanding the movement.

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<sup>2</sup> Ibid., 4.

<sup>3</sup> Oscar C. McCulloch, *The Tribe of Ishmael: A Study in Social Degradation* (Indianapolis: Charity Organization Society, 1888), 2.

<sup>4</sup> Philip R. Reilly, *The Surgical Solution: A History of Involuntary Sterilization in the United States* (Baltimore: The Johns Hopkins University Press, 1991), 30.

<sup>5</sup> Ibid., 31-32.

<sup>6</sup> Ibid., 39.

## Rise of Crime and the Inheritance of Criminality

Around the turn of the century, crime was becoming an issue across the country. The landscape of the country was changing due to a large increase in population. Additionally, the population was becoming more concentrated in urban areas, creating more opportunities for crime. According to an article in the *Journal of the American Medical Association*, crime in 1890 had risen 455% over crime in 1850. One in every 757 persons was imprisoned according to the 1890 census. The problem was seen to be even larger as more people were likely involved in criminal activity yet had been able to evade capture.<sup>7</sup>

During this period of increased population in prisons, some were calling for prison reform. People saw the rise in the prison population as a failure of the penal system. Dr. F.E. Daniel wrote:

That a government should—possessing the power and means to do so—prevent an increase in the criminal element, is a proposition which requires neither argument nor defense; that it should permit—nay, deliberately propagate and encourage an increase of criminals out of all proportion to population, is monstrous.<sup>8</sup>

Daniels viewed the current penal system as a way to achieve retribution, not justice and reform. Criminals were being punished by being locked up in prisons, which did not necessarily serve as a proper deterrent nor provided adequate justice.

Similarly, some professionals felt that capital punishment was simply another form of crime. Capital punishment was seen as legalized murder and a curse to the United States.<sup>9</sup> In some states, men could be hanged for crimes such as rape. Instead of hanging, advocates proposed castration and long-term imprisonment as non-lethal solutions. Once a prisoner was released from prison, his castration would prevent him from raping again. While castration prevented rape and procreation, it was far from a perfect solution. Castration consists of removing a man's

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<sup>7</sup> F.E. Daniel, "A Plea for Reform in Criminal Jurisprudence," Read at the regular meeting of the Chicago Medico-Legal Society, January 11, 1896, *Journal of the American Medical Association*, 21 (1896): 129.

<sup>8</sup> *Ibid.*, 1085.

<sup>9</sup> F. L. Sim, "Asexualization for the Prevention of Crime and the Curtailment of the Propagation of Criminals," Read during Society Proceedings of the Medical Society of the State of Tennessee, *Journal of the American Medical Association* 20 (1894): 753.

testicles, which mutilates the body. Many men suffer from insecurity, a sense of a lost manhood and other mental disturbances.<sup>10</sup>

By the mid-1890s, medical literature indicated that castration was an effective means of sterilization but the mental effects on those castrated made it unfavorable. Castration was far too cruel to inflict upon men who were being sterilized for non-sexual crimes. In 1909, Dr. Harry Sharp published his alternative method of sterilization in the *Journal of the American Medical Association*. Dr. Sharp used a new medical procedure called a vasectomy as a way to sterilize men. According to Sharp, a vasectomy was a safe and easy procedure that could be completed in only three minutes. A vasectomy simply prevented sperm emission while leaving the testicles intact. Men who had received a vasectomy could still have sexual relations but would not be able to impregnate women.<sup>11</sup> Men were effectively sterilized without the mental or physical scars left by castration and lost the potential to create more criminal offspring that would be likely to become criminals because crime was beginning to be seen as a mental defect in the 1890s. Many social scientists thought that criminals were created due to a combination of inheritance of bad traits and growing up in a bad environment.<sup>12</sup>

### **Dr. Harry Sharp and the Indiana Reformatory**

The Indiana Reformatory was a prison located in Jeffersonville, a town in southern Indiana. Young men between the ages of sixteen and thirty were sent to the reformatory upon receiving a felony conviction without a sentence of life in prison or death. Dr. Harry Sharp came to the Indiana Reformatory in 1895, two years after receiving his medical degree. At the time of his arrival, the Indiana Reformatory was already known for being a pioneer in the fields of sanitation and medical practices.<sup>13</sup>

Dr. Sharp was soon performing vasectomies to treat patients at the Indiana Reformatory. On October 12, 1899, Dr. Sharp performed the first vasectomy on a man being held in custody of the state. According to Dr. Sharp, an inmate complained of excessive masturbation and requested a castration. Sharp instead recommended a vasectomy, which he claimed would have the same effects but would be a less traumatic surgery. After the procedure, the inmate reported that he was still suffering from masturbation despite being rendered sterile.

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<sup>10</sup> Harry C. Sharp, "Vasectomy as a Means of Preventing Procreation in Defectives," *Journal of the American Medical Association* 23 (1909): 1899.

<sup>11</sup> Sharp, "Vasectomy as a Means of Preventing Procreation," 1899-1900.

<sup>12</sup> F.E. Daniel, "A Plea for Reform," 129.

<sup>13</sup> Edwin Black, *War Against the Weak: Eugenics and America's Campaign to Create a Master Race* (New York: Four Walls Eight Windows, 2003), 63.

He again requested castration but Sharp gave him another treatment and within six months the inmate had stopped masturbating. As a result, Sharp reported that the inmate's head was clearer and he was able to succeed in school.<sup>14</sup>

Due to his success at curing the inmate's masturbation urges, Sharp felt that he had struck on a relatively simple procedure that would solve a common problem. The vasectomy procedure, according to Sharp, "would not mutilate the patient, nor impair his health, and yet, would improve the nervous system."<sup>15</sup> The inmate who had received the first procedure told the other inmates of its success and recommended vasectomies to other inmates suffering from chronic masturbation. Inmates were soon requesting Sharp's help in obtaining treatment.<sup>16</sup>

Initially, Dr. Sharp was only performing the operation upon request by an inmate. At the time, there was no law providing for the involuntary sterilization of inmates. Legally, Sharp could only perform a vasectomy with the permission of the patient or to solve a necessary medical problem. As a eugenicist, however, Sharp saw how vasectomies could be used to sterilize inmates for the purpose of limiting procreation.

As Sharp began to disseminate his ideas, his work caught the attention of other eugenics advocates in the state. He had many supporters who held positions in the state government, most notably Charles E. Shively, member of the Reformatory Board of Managers and Amos W. Butler, secretary of the Indiana Board of State Charities.<sup>17</sup> While Sharp was gaining support, he still was not able to move forward with his plans to make sterilization as a means to prevent procreation legal. When W.H. Whittaker became the Superintendent of the Indiana Reformatory, however, Sharp finally had a supporter who was willing to present a bill to the legislature. Whittaker was able to get a sterilization bill introduced to the Indiana House of Representatives in 1905 but it never achieved adequate support and died out.<sup>18</sup>

In order to get the bill passed, Whittaker and Sharp needed more support. Whittaker presented another sterilization bill to the House in 1907, this time in conjunction with Dr. Horace G. Read. Dr. Read was a member of the House and was thus able to promote the bill to his House colleagues. Whittaker and Sharp understood the importance of gaining

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<sup>14</sup> William M. Kantor, "Beginnings of Sterilization in America: An interview with Dr. Harry C. Sharp, who performed the first operation nearly forty years ago," *Journal of Heredity* 28 (1937): 374.

<sup>15</sup> *Ibid.*, 374.

<sup>16</sup> H. C. Sharp, "Rendering Sterile of Confirmed Criminals and Mental Defectives," *Proceedings of the Annual Congress of the National Prison Association* (1907), 178.

<sup>17</sup> *Ibid.*, 179.

<sup>18</sup> *Ibid.*

support from legislators before the reintroduction of the bill. They learned from the example of Pennsylvania, which had introduced a sterilization bill in 1905 that was vetoed by the governor. While there was plenty of support in the medical and scientific communities, the bill's advocates had failed to garner adequate support from the Pennsylvania legislators.<sup>19</sup>

Though the bill eventually passed through the Indiana House and Senate, it was not without opposition. Much of the opposition was focused on Indiana's commitment to reform in prisons.<sup>20</sup> Some legislators were concerned that sterilization would replace the current system of reform through education, labor and an improved environment. In order to convince legislators to accept the bill, Whittaker had to convince them that reform was still a goal of the prison system. Sterilization was to be a new step in this reform process. Whittaker's argument focused on the idea of degeneracy. Although some criminals became criminals due to extenuating circumstances, the majority were criminals because they were degenerates. Sharp writes:

The author of this law, Mr. Whittaker, who is an enthusiastic believer in reformation through education and improved environment, holds that this law is in no way paradoxical with the idea of reform, for it applies to the degenerate class only, and degeneracy is a defect, not a disease. For it there is no cure. Idiots, imbeciles and degenerate criminals are prolific, and their defects are transmissible.... So we owe it to not only ourselves, but to the future of our race and nation, to see that the defective and diseased do not multiply.<sup>21</sup>

For Sharp and Whittaker, curing chronic masturbation was no longer the only concern in getting legislation passed. Sterilization needed to be legalized in order to prevent future generations of criminals from being born as criminals posed a threat to the well-being of the law-abiding citizens of Indiana.

### **An Act to Prevent Procreation**

The bill allowing sterilization was enacted by the general assembly of the State of Indiana March 9, 1907. The bill opened as follows:

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<sup>19</sup> Jason S. Lantzer, "The Indiana Way of Eugenics: Sterilization Laws, 1907-1974," In *A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era*, edited by Paul A. Lombardo, (Bloomington, IN: Indiana University Press, 2011), 30.

<sup>20</sup> Sharp, "Rendering Sterile," 179.

<sup>21</sup> *Ibid.*, 180.

An act entitled an act to prevent procreation of confirmed criminals, idiots, imbeciles and rapists: providing that superintendents and boards of managers of institutions where such persons are confined shall have the authority and are empowered to appoint a committee of experts, consisting of two (2) physicians, to examine into the mental condition of such inmates.<sup>22</sup>

The bill recognized the role that heredity played in perpetuating crime and gave the prison system the right to sterilize inmates. A committee composed of the regular institutional physician as well as two additional physicians would conduct an examination of the prisoner, with no more than \$3.00 to be paid to each doctor as a consult fee. The committee of physicians would then meet with the board of managers for the institution and recommend sterilization for inmates for which there was no hope of improvement through other means as determined by the physician's exam. The physicians could determine the method of sterilization that would be "safest and most effective."<sup>23</sup> While the language of the law did not limit the practice of sterilization to a specific institution, sterilizations were only carried out at the Indiana Reformatory.<sup>24</sup>

### **Sterilization: A Constitutional Act?**

While the bill was approved by the legislature and signed into law by Governor J. Frank Hanly, it was not without debate. In September 1907, Dr. Sharp presented his sterilization methods at the National Prison Association conference. By 1907, Sharp had performed 176 vasectomies at the Indiana Reformatory. All of these operations had been done at the request of the inmate, as the law allowing forced sterilizations had just been passed.<sup>25</sup> After his presentation, a discussion was held among attendees. The Attorney General of Indiana, James Bingham, questioned the constitutionality of the law. Bingham thought that sane people could request their own sterilization procedures in order to relieve disease but expressed doubt about having a law which allowed the forced sterilization of sane persons. He stated that the law might be better upheld if it was imposed on a prisoner at sentencing as part of the punishment.<sup>26</sup>

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<sup>22</sup> *Acts of Indiana General Assembly*. H. 364, Chapter 215 (1907), 377.

<sup>23</sup> *Ibid.*, 378.

<sup>24</sup> Sharp, "Rendering Sterile," 180-81.

<sup>25</sup> Kantor, "Beginnings of Sterilization," 375.

<sup>26</sup> Sharp, "Rendering Sterile," 181.

Bingham cited a report written by Judge S. Roby for the Committee on Criminal Law Reform, which was presented at the same conference. Judge Roby discussed the law as it related to punishment for sex crimes. Roby felt that a jury should issue such a punishment on those who committed sex crimes at the time of sentencing in order to lessen the chance of abuse of the law.<sup>27</sup> Roby noted that where the law provided for sterilization as a necessary medical treatment, the law was valid. The part of the current law that referred to sterilization of rapists and other habitual criminals, however, was of “doubtful validity,” due to a lack of due process procedure.<sup>28</sup>

Dr. Horace G. Read, one of the bill’s legislative advocates, was quick to counter Bingham by noting the danger in considering sterilization a punishment. Sterilization was a “protection to society and the race” and it would be dangerous to leave that decision in the hands of the court.<sup>29</sup> Instead, as mandated by the law, a board of trained physicians would be much better able to determine which inmates needed to be sterilized. Before the bill was passed, Read had expressed doubts about not having the courts ordering sterilization, but “after a little conversation with Mr. Whittaker,” he quickly came around.<sup>30</sup> In looking at the language of the law, it was stated several times that the “operation shall not be performed except in cases that have been pronounced un-improvable.”<sup>31</sup> Indiana already had a law that defined a confirmed criminal. Confirmed criminals had three or more felony convictions; they could not be improved. Confirmed criminals, rapists, idiots and imbeciles already in prison were all eligible under law to be considered for sterilization. Read saw this law as perfectly sound because society should be able to protect itself against those of this class.<sup>32</sup>

The main stumbling block in this debate over sterilization was not the question of whether sterilizations should be performed but who should be in charge of making such a decision. No one was really questioning the morality of such a law, just the constitutionality of the language of the law. Bingham and Roby held that the decision to sterilize a patient needed to be handed down as part of the sentencing process. Forcing sterilization on inmates was inflicting an additional punishment that was not mandated by a court of law. Read and Sharp believed that a judge and jury could not possibly determine which

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<sup>27</sup> Frank S. Roby, “Criminal Law Reform,” Proceedings of the National Prison Association (1907), 186-194.

<sup>28</sup> Ibid., 193.

<sup>29</sup> Sharp, “Rendering Sterile,” 183

<sup>30</sup> Ibid., 183.

<sup>31</sup> *Acts of Indiana General Assembly*. H. 364, Chapter 215 (1907), 378.

<sup>32</sup> Sharp, “Rendering Sterile,” 183.



criminals qualified for sterilization. Only trained medical professionals could make that decision. Whittaker reinforced Read and Sharp's statements by explaining that the board of managers at the prison had the final say over the institutional doctor in regards to sterilization. The board of managers was to be the safeguard in protecting inmates from unnecessary surgery.<sup>33</sup>

To counter Bingham and Roby, Sharp reiterated that sterilization was not to be seen as a punishment. He said that Roby was in favor of sterilizations, but "he perhaps sees some legal defect that may endanger the law."<sup>34</sup> Sharp was unconcerned about the chances of the law being overruled "unless some lawyer wishes to create trouble."<sup>35</sup> He went on to note that none of the 223 inmates that he had operated on have issued a complaint. Sharp stated, "It seems to me their silence is sufficient evidence, if nothing else, because they are a class that would rather make trouble if they thought they had been wronged."<sup>36</sup> Clearly, Sharp is taking the silence of inmates as consent when in fact they were a captive audience, often with little understanding of their own rights. Sharp counted success stories among the inmates as some were able to leave the institution once their sentence was complete.

While there was clearly much debate over the issue of sterilization among some of the most powerful men in the Indiana government, the law stood. Governor J. Frank Hanly was in favor of the law and a supporter of the Indiana prison system. Hanly delivered a paper at the 1907 National Prison Association conference, the same conference in which Roby and Sharp delivered papers. Hanly did not discuss sterilization in his paper but did outline Indiana's indeterminate sentence law, which allowed for prison sentences to be more flexible. Sentences were determined by a prisoner's age and their statement of guilt, ending uniform punishments and allowing prisoners to have shorter sentences.<sup>37</sup> Hanly admitted that he was initially against this law, but over time changed his mind and grew to like the law. Hanly felt that it was fair to be more compassionate towards first time offenders, who likely became criminals "by accident or stress of circumstances."<sup>38</sup> "Professional criminals" were to receive harsher sentences. Hanly stated, "After nearly three years of close official relation with those charged with the immediate administration of the law, my past prejudices are broken down. Instead of its critic, I have become its

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<sup>33</sup> Sharp, "Rendering Sterile," 185.

<sup>34</sup> *Ibid.*, 184.

<sup>35</sup> *Ibid.*, 184.

<sup>36</sup> Sharp, "Rendering Sterile," 184.

<sup>37</sup> J. Frank Hanly, "The Indiana Indeterminate Sentence," *Proceedings of the Annual Congress of the National Prison Association* (1907), 81-82.

<sup>38</sup> *Ibid.*, 88.

defender. I have been convinced by what I have seen and hear and learned.”<sup>39</sup> While Hanly may not have been openly endorsing sterilization, he did express support for the prison system which propagated sterilizations. Dr. Sharp considered Hanly an ally, noting that his “administration has been noted for its efforts at race purity and civic righteousness.”<sup>40</sup> Sharp’s support within the government was about to change, however, with the election of Thomas Riley Marshall as governor.

### A Change of Power

J. Frank Hanly and Thomas Riley Marshall were from opposite ends of the political spectrum. Hanly was the last governor of a twelve-year Republican hold on the office of governor. Marshall was a progressive Democrat who had attracted a large following due to his likable personality on the campaign trail.<sup>41</sup> Hanly and Marshall shared a mutual dislike and distrust of each other. Hanly almost refused to ride with Marshall to his 1909 inauguration, an Indiana tradition, but finally consented in the spirit of good politics.<sup>42</sup>

As the first Democratic governor in twelve years, Marshall had his work cut out for him. The transition was not an easy one and the Democrats struggled as they fought to retain their new power. In regard to sterilization, Dr. Sharp and the sterilization advocates were about to find out that the new administration was not as friendly toward their practices as Hanly and the Republicans had been. Throughout his governorship, Marshall was known to be sympathetic to criminals, issuing twice as many pardons as Hanly. Marshall also believed in the parole system. He liked to release prisoners into the hands of a stable mentor. If the criminal’s behavior remained good, he would be released from parole and receive a pardon.<sup>43</sup> Marshall clearly believed that criminals could be reformed and become productive members of society.

Given his sympathetic attitude toward criminals, it is not surprising that Marshall was not comfortable with the new sterilization law. Shortly after his inauguration, Marshall began to work toward having the sterilization law declared unconstitutional. Within days of taking power, he was already receiving letters from concerned citizens. A citizen from Plymouth, Indiana wrote Marshall to ask him to halt sterilizations on the grounds that it was wrong to perform sterilizations without consent. While the writer of the letter acknowledged that those

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<sup>39</sup> Ibid., 89.

<sup>40</sup> Sharp, “Rendering Sterile,” 179.

<sup>41</sup> Charles M. Thomas, *Thomas Riley Marshall: Hoosier Statesman*, (Oxford, Ohio: The Mississippi Valley Press, 1939), 55.

<sup>42</sup> Ibid., 57.

<sup>43</sup> Ibid., 96.

who were operated on before the law was passed had given consent, he or she questioned the legitimacy of the consent. The writer stated, "It is an easy matter to get the consent of a man when you have him in your power from two to fourteen years. The burglar often gets the consent of a man to take his money by holding a lighted torch to his feet."<sup>44</sup> The writer was even more upset that the 1907 law no longer required any sort of permission from the inmates.

Dr. Sharp, however, was not about to let all of his work come to a halt. Sharp met with Governor Marshall during the spring of 1909 in order to persuade him to leave the sterilization bill alone. Sharp's argument was based around two main points. The first point was that sterilization was becoming more widespread and other states were looking at Indiana as an example of a state with a successful sterilization law. Secondly, Sharp maintained that the law was constitutional because the sterilizations were not a second punishment but a measure aimed at improving the mental and physical health of inmates.<sup>45</sup>

One of the concerns Marshall raised was the possibility that the state could be sued by former inmates who had been sterilized. Sharp stated:

I am firmly of the opinion that no-one operated upon would institute action for damages, upon his own initiative, for after close post-operative observation of over four hundred cases, I am in a position to know positively that there has been no damage done. So I appeal to you again to discourage, rather than incourage (sic) any legal action, and to pursue the course that I suggest, which is to let the law remain in operative, until such time that a law may be enacted, which you consider constitutional.<sup>46</sup>

Sharp claimed none of the inmates protested, but over half of the vasectomies had been performed voluntarily and it is not known how fully those who had been forcefully sterilized understood what had been done to them. Sharp's appeals to Marshall worked. No legal action was pursued and the sterilization law was not declared unconstitutional. It was not a total victory, however. While Marshall agreed not to pursue legal action, he halted all sterilizations for as long as he was in office.<sup>47</sup>

## **The Future of Sterilization in Indiana**

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<sup>44</sup> Concerned citizen to Thomas Riley Marshall, 1909.

<sup>45</sup> Harry Sharp to Thomas Riley Marshall, 1909.

<sup>46</sup> *Ibid.*, 1909.

<sup>47</sup> Kantor, "Beginnings of Sterilization," 375.

While the Indiana sterilization law was halted by Governor Marshall and his successor, Governor Samuel L. Ralston, the law remained valid. The only thing that prevented sterilizations from happening were the wishes of the governors. When Governor James P. Goodrich was elected in 1917, he decided to have the law tested in court. In 1919, Goodrich recruited the Jeffersonville city attorney to take on the case of Warren Wallace Smith, an inmate at the Indiana Reformatory who had been ordered to be sterilized by the prison's board of trustees. When the circuit court ruled in Smith's favor, the lawyers for the Indiana Reformatory appealed the case to the Supreme Court of Indiana.<sup>48</sup>

One May 11, 1921, *William v. Smith* was heard before the Supreme Court of Indiana. William Wallace Smith was suing Charles F. Williams, Chief Physician at the Indiana Reformatory, because he felt that his right to due process was being violated.<sup>49</sup> Due process would have provided Smith the opportunity to defend himself in front of Williams and the board of trustees. Instead, the order to sterilize Smith had been decided behind closed doors. Smith was not allowed to offer any evidence or experts that would support his point of view that sterilization could be harmful. The Supreme Court of Indiana upheld the circuit court ruling, declaring that the 1907 sterilization law was in violation of the Fourteenth Amendment of the federal Constitution because it denied the defendant due process.<sup>50</sup>

It took twelve years for the sterilization law to be declared unconstitutional after it stopped being enforced, but it only took seven years for a new sterilization law to be passed. While sterilization had fallen out of favor in Indiana from during the second decade of the 20<sup>th</sup> century, events in the 1920s brought about a resurgence of interest in sterilization. One of the key influences was *Buck v. Bell*, a case that was argued before the Supreme Court in 1924. In *Buck v. Bell*, the Supreme Court upheld the Virginia sterilization law. It was ruled that the Virginia sterilization law provided for due process and was not a dangerous or unreasonable act because it protected the welfare of the rest of the population of Virginia.<sup>51</sup> The Virginia sterilization law was an example of a successful law that was considered constitutional, paving the way for the passage of similar laws in other states.

The 1927 sterilization law in Indiana shifted the focus from prisons to the institutions for the feebleminded. The 1907 law called for

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<sup>48</sup> Paul A. Lombardo, *Three Generations, No Imbeciles* (Baltimore: The Johns Hopkins University Press, 2008), 98.

<sup>49</sup> Williams, et. al. v. Smith, 190 Ind. 526 (Supreme Court of Indiana, 1921).

<sup>50</sup> Ibid.

<sup>51</sup> Lombardo, *Three Generations*, 167.

sterilizations of “confirmed criminals, idiots, rapists and imbeciles”<sup>52</sup> while the 1927 law did not include criminals as part of the targeted population. The 1927 law would allow sterilizations on those “afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy” that were committed to a state mental health institution.<sup>53</sup> The 1927 law, however, created many more procedural steps that had to be followed before sterilization could be performed. To get the sterilization procedure started, the superintendent of the governing board had to present to the board members the reasons an inmate had been selected to be sterilized. A petition had to be given to the inmate as well as their guardian or next of kin informing them that hearing with the governing board would be taking place. During the hearing, the governing board would review the inmate’s file and the inmate or their guardian would be given a chance to present a defense. If the governing board decided to proceed with sterilization, the inmate or their guardian would be able to appeal that decision to the circuit court within 30 days and eventually the state supreme court if necessary.<sup>54</sup>

The 1927 differed greatly from the 1907 law in regards to due process. This law made sure that the inmates who were to be sterilized were able to launch a defense for themselves. Additionally, the inmates were given the right to appeal the governing board’s decision in the Indiana court system. The 1927 law also removed liability from those performing the sterilization procedure as long as all legal steps as outlined earlier in the written law were followed.<sup>55</sup> The 1927 law included such a lengthy review process in order to provide due process and avoid the fate of the 1907 law.

Subsequent sterilization laws passed in 1931 and 1935 provided further due process protections. Both the 1931 and 1935 laws were passed to provide further clarifications and did not invalidate the 1927 law. The 1931 and 1935 laws were very similar and made the same clarifications but the 1931 law applied to the feeble-minded while the 1935 law focused on the insane. The 1931 law stated that when an application to commit a feeble-minded person was brought to court, the examining physician had to state whether or not the person was likely to have feeble-minded offspring.<sup>56</sup> The difference between the 1927 law and the 1931 and 1935 laws was that the power to allow sterilization of a person was taken out of the institutions and placed into the Indiana

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<sup>52</sup> *Acts of Indiana General Assembly*. H. 364, Chapter 215 (1907), 378.

<sup>53</sup> *Acts of Indiana General Assembly*. S. 188, Chapter 241 (1927), 713.

<sup>54</sup> *Ibid.*, 714..

<sup>55</sup> *Ibid.*, 714..

<sup>56</sup> *Acts of Indiana General Assembly*. H 220, Chapter 50 (1931), 116.

courts. Once the sterilization decision was approved by the courts and the person was institutionalized, the superintendent of the institution could then decide whether or not the operation was medically necessary. An additional provision required a full report on the sterilization procedure to be sent to the secretary of the state board of charities within ten days.<sup>57</sup>

### **Beyond Indiana: Sterilization in the 20<sup>th</sup> Century**

The eugenic sterilization movement experienced many highs and lows during the 20<sup>th</sup> century, mainly due to the constitutionality of sterilization laws. One of the most well known sterilization cases was the 1942 Supreme Court case of *Skinner v. Oklahoma*. Like *Williams v. Smith*, *Skinner v. Oklahoma* concerned forced sterilizations of criminals. In this case, Jack Skinner was to undergo sterilization after his third felony conviction. As with *Williams v. Smith*, *Skinner* was overturned because of a constitutional issue. In this case, the 1935 Oklahoma sterilization law was ruled unconstitutional by the Supreme Court because it did not require sterilizations for inmates convicted of white collar crimes such as embezzlement, a violation of the equal protection clause of the Fourteenth Amendment.<sup>58</sup> Sterilization programs began to slowly decline in the post-WWII period, however, as heredity feeble-mindedness was no longer seen as a huge threat.<sup>59</sup> The link between heredity and criminality or feeble-mindedness that had existed in the early part of the 20<sup>th</sup> century no longer seemed as definitive to many within the medical and scientific communities. The law took longer to catch up. In Indiana, sterilization laws remained valid until 1974. While forced sterilizations are no longer carried out, many laws still remain on the books in other states because no one has ever challenged them.

The many sterilization laws passed throughout the 20<sup>th</sup> century serve to demonstrate a long trend of trying to explain crime through science. Scientists have spent more than a century trying to find some way to explain crime as a sort of deviation of nature.<sup>60</sup> Despite the fact that many of these claims have been proven false, they only serve to reinforce the inequality that those who have committed a crime must face. Although people came to reject the notion that sterilizations for criminals were really for the good of nation, some scientists have not given up on a genetic explanation for crime.

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<sup>57</sup> Ibid., 117.

<sup>58</sup> Paul A. Lombardo, *Three Generations*, 225-230.

<sup>59</sup> Reilly, *Surgical Solution*, 135.

<sup>60</sup> Victoria F. Nourse, *In Reckless Hands: Skinner v. Oklahoma and the Near Triumph of American Eugenics* (New York: W. W. Norton & Company, 2008), 162.

## **Conclusion**

The eugenics movement that emerged in the 19<sup>th</sup> century used the new scientific discoveries of genes and inheritable traits to explain the propagation of degenerate peoples. In order to prevent degenerates from passing on their bad traits, sterilization programs began to be seen as a way to eliminate the threat. Those who supported eugenic sterilizations saw themselves as public health advocates. Sterilizations were seen as good and necessary because they would allow bad genes to die with a degenerate person instead of living on in his or her offspring.

Examining the origins of sterilization law explains how pervasive the science of heredity was becoming. At the same time that crime was being described as an inheritable condition, new medical procedures such as the vasectomy were making sterilizations much more practical and safe. Dr. Harry Sharp of Indiana became very interested in the use of vasectomies as both a therapeutic and eugenics tool. Vasectomies could cure those suffering from sexual perversions as well as prevent future generations of criminals from being born. Through successful lobbying in the Indiana legislature, Sharp was able to get the first ever sterilization law passed and marketed his methods to interested practitioners in other states.

While sterilizations were never carried out to the extent that many sterilization advocates would have liked, thousands of people did lose their reproductive rights by force. Forced sterilizations were a hotly debated issue because the right to reproduction is seen by many as a basic human right. Sterilization advocates argued that sterilization was necessary because it would create better generations of people over time while those opposed felt that it was an unfair punishment for people who had led troubled lives. Ultimately, the eugenics agenda proved to be a forceful one as the United States Supreme Court upheld forced sterilizations. While sterilizations fell out of favor as heredity became better understood, it is still important to examine this chapter in the history of reproductive rights. Allowing sterilization of those deemed undesirable was a dangerous precedent, as evidenced by the debates surrounding the issue of who was allowed to decide to sterilize a person. To take away a person's right to reproduce is a huge amount of power, a power that should not be made lightly as a quick fix to a problem that could be solved or improved through reform and therapy.

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