

## Sterilization

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# JURISPRUDENCE

## STERILIZATION

If the State is not the ultimate source of all rights, there are limitations on civil law. This antecedent needs no discussion. The consequence is with us. The question then is as to whether the limitations on civil law stop short of or include the matter of state action regarding sterilization.

Were the statute to provide for sterilization for any other reason than as punishment for a crime already committed, it would be decreeing this ignominious operation for innocent people. An inspection reveals that existing statutes do not allow sterilization for punishment of crime committed. They may require the commission of a crime or crimes as a *condition* for invoking the sterilization treatment but it cannot be seriously contended that such treatment is in intention, fact, or (in the great majority of cases) effect a punishment. Quite obviously the intent of a legislature is preventative rather than penal.

Our concern then is whether or not the state has the right to pass sterilization legislation affecting innocent people. The answer is NO. The reason simply stated is this: such civil action would frustrate the right to maintain bodily integrity untampered; which right inheres in man as a man and not as a member of a state.<sup>1</sup> The right is given by an order higher than the civil order.

Most proponents of sterilization, however, do not bring their arguments to this level. Rather it is said that such measure would promote the general welfare. It is pointed out that the statute is designed to prevent the bringing into being those who sap the strength of the state, or to make unnecessary the inevitable execution of degenerate offspring. Mr. Justice Holmes felt that the issue was conclusively settled when he said, "Three generations of imbeciles are enough."<sup>2</sup> In other words most proponents spend their time evaluating the ends when the moral issue involved concerns the means. The end does not justify the means. Other means, viz. segregation and isolation, available for accomplishing the same end are suggested as less "humane". These methods are within the scope of the state's rights, while sterilization is not.

Those advocates who do try to justify the means of sterilization argue most persuasively in the following manner. Because mutilation is lawful for the health of an individual's body, it is also lawful for the state to mutilate an individual's body for the common good. Such rea-

<sup>1</sup> Connell, *Morals in Politics and Professions*, The Newman Bookshop, Westminster, Md. (1946), pp. 17 & 33; Davis, "The Duty of Parents," in *Moral Principles and Practice*, Sheed and Ward, London and New York (1933); note, 27 *Marq. L. Rev.* 99.

<sup>2</sup> *Buck v. Bell*, 274 U.S. 200, 47 S. Ct. 584, 71 L.Ed. 1000 (1927).

soning is fallacious because there is not the requisite parity between the members of the human body to the human body on the one hand, and the members of the state to the state on the other. Bodily organs exist for the whole individual, but individuals do not exist for the good of the state. Rather the state exists for its membership, the people. The state exists for the preservation of the same natural rights of man that is usurps by sterilization.

Assuming sterilization not bad, does it accomplish its purported end; broadly, the common good? One sterilized is not prevented from committing the crimes toward which he is inclined. He is even released into society where commission of them is facilitated. And is it true that society would be better off without defectives?<sup>3</sup>

EDITOR

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<sup>3</sup> "The care of defectives by the state brings out the noble qualities of charity and mercy and sympathy and faith in men just as the care of a sick child brings out the best qualities in a father and mother." Sullivan, *Special Ethics*, Thesis X X X 1, p. 192.