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Sociological Expediency of Sterilization Statute

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how can it be said that both are guilty of the same crime which, under the proposed single standard, the jury might well find? There would be no limit placed on the jury's discretion; ordinary negligence might be made the basis of a conviction of manslaughter in the first degree.

If the rule were changed, what would be the practical result? The already overcrowded courts would be burdened by another species of crimes. The poorer class would suffer in that it could not pay the fines imposed, and would have to serve a jail sentence. The economic result would be bad. All this would be accomplished in trying to realize the vain hope of deterring negligent acts and thus preventing accidents.

It has been suggested that the ordinary negligence standard be used in criminal cases with the added provision that the jury be instructed that it is a criminal action when determining whether or not the defendant has been guilty of ordinary negligence. Such a technical rule would serve to confuse the jury until it would be almost impossible for it to come to a sensible decision on the defendant's guilt or innocence. The present rule is much simpler and much more desirable. When a judge instructs the jury that something more than ordinary negligence is necessary in a criminal action, something which evinces a wanton and reckless disregard of life, there flashes into the mind of the juror a mental picture in which the juror sees a person committing a rash and reckless act. Such a picture aids him in determining whether or not the defendant has committed such an act and thus enables him to come to a just decision.

The law must progress and expand to meet the needs of the times. It is in the constant process of growth and rightly so, but the proposed extension of the negligence standard in civil cases to the field of crime is a radical departure from the established rule, calculated to be of slight preventive value, which, when compared to the hardship and injustice placed upon the defendant, seems relatively small. In such a situation it is submitted that, even though the present rule has its faults, it should be retained until another and better one is suggested.

E. W. SALISBURY.

SOCIOLOGICAL EXPEDIENCY OF STERILIZATION STATUTE¹

In Kentucky the marriage of an idiot or lunatic is declared void.² We have no provision prohibiting the feeble-minded from marrying, except that we penalize aiding or abetting the marriage of the feeble-

¹In this note we are not considering the much controverted subject of sterilization for eugenical purposes, but only the sociological aspect of sterilization.

²Ky. Stat. (1929) Sec. 2097.

minded.³ This note will attempt to show the need for a statute in Kentucky prohibiting the marriage of all mentally deficient persons unless they are sterilized.

Need for Institutional Care

First we will consider whether the mentally deficient can successfully maintain themselves outside of an institution. Can the mentally deficient be retained as functioning members of society from an economic and social standpoint? The answer to this question is undoubtedly in the affirmative. The authorities agree that a large majority can sufficiently meet the standards of society, after proper training, to remain as members of that society.⁴ After a study of the occupational uses of the feeble-minded one author concludes, "We no longer see the necessity for institutional care for more than 10% of the feeble-minded."⁵ The mentally deficient are well adapted to work that becomes drudgery to a person of normal intelligence. They can successfully operate modern machinery that requires repetition of movement hour after hour. They can work on farms, do house work, and various other forms of labor.

The parole system has been practiced in several states with marked success. The individuals that required removal to an institution, after a period of training, have made a successful adjustment upon leaving the institution in seventy-five percent of the cases.⁶ Dr. Lyon, former Superintendent of the Kentucky Feeble-Minded School, stated to the author that on short notice he could release at least forty percent of the entire population of the school and that they could successfully maintain themselves outside of the institution, but that he could not release them because of the danger that they would become parents.

Permitting marriage after sterilization will increase the number of individuals that can become economically independent. The mentally deficient husband can maintain a home for a wife, but with the increasing number of children it becomes impossible for the husband

³ Ky. Stat. (1929) Sec. 216 aa 50.

⁴ Davies, S. P., *Social Control of the Mentally Deficient* (1930), p. 179. "Experience to date indicates that the large majority of the mentally deficient may be safely and profitably retained as functioning members of society, both from an economic and a social standpoint, provided the group exercises over them a sufficient degree of social control to give them, until they approach adult life, the training suited to their opportunities and continue to furnish throughout their lives the sort of leadership which will foster in them the highest social ideals."

⁵ Greene, R. A., *Progress in Understanding and Control of the Feeble-Minded* (1930) 151 Ann. of Am. Acc. 130, at 136.

⁶ Human Betterment Foundation, Pamphlet 2; Stars, H. C., *Report on an Investigation Made of Cases Discharged from Lechworth Village* (1929) 34. Jour. Psychoasthenics 220-232. "Of those who could be located, three out of every four discharged made a successful adjustment after a period of training."

to support the family. Relieve the husband from the added economic burden of children and he can maintain a home and live comfortably. Freedom from child-bearing enables the deficient wife to work outside the home and thus add to the family income, so that even if both the husband and the wife are economically not very efficient their joint earnings are adequate to support them comfortably.

From the authorities and from reason we must conclude that the mentally deficient, relieved from the burden of children can successfully be retained as functioning members of society, both from an economic and a social standpoint. Thus the taxpayer will be relieved of a great burden.

Our principal question is whether the mentally deficient should be permitted to raise children. In answer to this question we must consider the environmental effect the mentally deficient home has on the child. "The child in his behavior generally finds his models in the accustomed behavior patterns, first of the other members of his family, then of the adults among his relatives whom he admires, or in the neighborhood, or at school. Some of his companions serve as his models also. From these patterns, which often influence him both directly and indirectly, he acquires his attitudes. . . . These social relationships begin in the home in earliest infancy and continue to be the most potent forces in the whole life of the individual."

Practically all authorities agree that mental deficiency is the mother of crime, pauperism, and degeneracy.⁷ We can better understand the relation that being raised in the home of mentally deficient parents has to crime by considering the causes of crime.

Disruption of the Childhood Home

Disruption of the childhood home leads to anti-social behavior. This is probably due to increased economic difficulties, deprivation of education and developmental opportunities, and failure of the normal guiding influences of home training.⁸ The authorities agree that disruption of the childhood home plays a part in the production of crime. They have found that from 40 to 70 percent of delinquents come from disrupted homes. Healey, and Healey and Bronner, have shown that

⁷ Reuter and Runner, *The Family*, p. 310.

⁸ Davies, *supra*, note 4, p. 87. "Practically all writers agree, however, that feeble-mindedness is the mother of crime, pauperism, and degeneracy."

⁹ Sutherland, E. H., *Criminology* (1924), p. 143. "There appears to be no doubt that approximately twice as many delinquents come from homes thus broken as would be expected in view of the entire number of broken homes in the United States. It is conceivable that this is not in itself, the significant fact, but that both the break in the home and delinquency may be due to economic conditions, alcoholism, or other conditions. But it is probable that the break in the home, in itself, is extremely significant: it generally effects both the economic position of the family and the supervision of the children."

at least 50 percent of juvenile delinquents come from disrupted homes.¹⁹ Shidler has estimated that 25 percent of all children, as compared with 40 to 70 percent of all delinquents, come from disrupted homes;²¹ Sutherland, after a review of the authorities, concludes that the disrupted home occurs twice as frequently among delinquent minors as among non-delinquents.²²

"There is a decided relationship between feeble-mindedness and abandonment, feeble-minded abandonments occurring proportionately nearly three times as frequently as abandonments of comparable individuals of normal or nearly normal individuals."²³ The amount of intelligence possessed by the feeble-minded is insufficient to enable the individual to cope successfully with marital duties and responsibilities.²⁴ They cannot meet the economic demands of a family which result in abandonment.²⁵

When we consider the fact that the feeble-minded desert their families three times as frequently as do normal individuals or nearly normal individuals, and the additional fact that there is a direct relation between abandonment and children becoming delinquent, it is evident that the marriage of the feeble-minded has a direct relation to crime. The feeble-minded husband deserts his family, leaving them in utter destitution,²⁶ and thus leaves the son to gravitate to the corner gang and the pool room, and the daughter to wander about the streets. The one steals and the other is taken advantage of sexually.

Economic Status and Crime

No one will argue that the earning power of the mentally deficient is not decidedly lower than the earning power of the normal individual. When the mentally deficient have a family to support they are forced into dire poverty, lacking the actual necessities of human existence. There is a direct relationship between poverty and crime.²⁷ Poverty means segregation in the lower rent sections of a

¹⁹ Healey, Wm., *The Individual Delinquent* (1918), Book II, Chap. 6. Healey and Bronner, *Youthful Offenders* (1916) 22, *Am. Jour. of Socio.* 50-51.

²¹ Shidler, E. H., *Family Disintegration and the Delinquent Boy in the United States* (1918) 8, *Jour. of Crime, Law and Criminology*, 715.

²² Sutherland, *supra*, note 9.

²³ Erukson, M. H., *Some Aspects of Abandonment, Feeble-Mindedness, and Crime* (1931) 36, *Am. Jour. of Socio.*, 758, at 768.

²⁴ *Id.* at 759, "An individual of weak moral fiber, the constant demands of a family and the related economic stresses, may serve to push the individual beyond the pall of social conduct."

²⁵ *Id.* at 761.

²⁶ *Id.* at 759, "The greater extent of poverty among the abandonment cases enhances the value of the inferences . . . concerning the criminogenic forces of economic distress in abandonment. Also, the similarity of percentage for the two groups in abandonment cases emphasizes the environmental nature of poverty as a factor in the dereliction of abandonment."

²⁷ Sullen, J. L., *Criminology* (1926), p. 241; Garofalo, B., *Criminology* (1914), p. 147; Sutherland, *Criminology* (1924), p. 91.

city where people are isolated from cultural advantages. It generally means lack of sanitary surroundings and great crowding. Poverty generally means mother and father away working, hence extreme parental neglect, and extreme lack of parental control.¹⁸ Poverty in the modern city generally means segregation in a district which has a tradition for crime and immorality. A district with a tradition for crime and immorality is apt to produce criminals.¹⁹ In permitting the mentally deficient to rear children we are forcing these children into such detrimental conditions as have been enumerated, with the result that they are apt to become delinquent. Even if they do not become criminals they are void of all ambition, and become the chief contributors to our slums and become the parents of criminals.

The important part that the family²⁰ plays in the production of delinquents can best be shown by a quotation from Healey and Bronner, "If we ruled out the families in which there were such clearly unfortunate features of home life as poverty, great crowding, very unsanitary surroundings, extreme parental neglect or extreme lack of

¹⁸ Sutherland, *supra* note 17, at 169. "Without comparable statistics for the general population it is not possible to determine how important poverty is, and even if such statistics were available it could not isolate economic conditions from drunkenness, feeble-mindedness, and other things that might cause both the poverty and delinquency. Without being able to determine accurately the importance of this factor, therefore, it is possible to consider the ways in which poverty tends to produce delinquency. Poverty in the modern city generally means segregation in low rent sections, where people are isolated from many of the cultural advantages and forced into contact with many of the degrading influences. Poverty generally means a low status, with little to lose, little to respect, little to be proud of, little to sustain efforts to improve. It generally means bad housing conditions, lack of sanitation in the vicinity, and lack of community institutions. It generally means both parents away from home for long hours, with fatigue when returning home, lack of control of children, and irritation that goes with these. It generally means withdrawal of the child from school at an early age and the beginning of mechanical labor, with weakening of home control, the development of anti-social grudges, and lack of cultural contacts. Poverty, together with the display of wealth in shop windows, streets, and picture shows, generally means envy and hatred of the rich and the feeling of missing much in life. . . . Poverty seldom forces people to steal or become prostitutes in order to escape starvation. It produces its effect most frequently in the attitudes rather than in the organisms."

¹⁹ Sutherland, *supra* note 17, at 157. "Certain types of neighborhoods may be considered as especially apt to produce criminals. One of the types is the district with a distinct tradition of crime and immorality. One gets his standing there in proportion to his criminality. The growing child assimilates the standards and code of his family or neighborhood and tends to become like them."

²⁰ Sutherland, *supra* note 17, at 136. "It is entirely possible, also, that there are other conditions, such as feeble-mindedness, which account both for the home condition and the delinquency." Clark, W. W., *Home Conditions and Native Intelligence* (1922), 7 *Jour. of Delinq.*, 21. Found a coefficient of correlation $+.25$ between home index and mentality of the parents.

parental control, excessive quarreling, alcoholism, obscenity, immorality or criminalism, mother away working, mentally diseased parent in the home, how many have we left? . . . then, among 2,000 young repeated offenders, there were living under reasonably good conditions for the upbringing of a child only 7.6 percent."²¹ From this we can readily see that environment is the chief cause of crime. It cannot be intelligently argued that mentally deficient parents should be permitted to raise children who are, from the day of their inception, underprivileged.

Advantage to the Individual

Sterilization provides many decided advantages to the individuals. They are relieved of the economic burden of children, thus increasing their standard of living. They are enabled to have a comfortable home, and to have more than the bare necessities of life. Sterilization does not affect the sexual enjoyment of the individual in any way.²² They are left in society as free individuals, and are not held in an institution as virtual prisoners for the greater part of their lives. The only thing they lose is the privilege of having the children which they do not want.²³ We can see that sterilization would permit these unfortunate individuals to live a happier, more contented life.

Conclusion

The mentally deficient furnish a substantive nucleus to the most expensive body of individuals who clog the machinery of justice. The logical place to check crime is at its source.²⁴ It is futile to continue to take the individual out of the environment that produces criminals, punish them, and permit the environment to continue which will pro-

²¹ Healey and Bronner, *supra* note 21, at 129. "We have no other figures showing such high correlation between background conditions as an incident of delinquency; where to place a large measure of responsibility, where to direct a strong attack in treatment, and for the prevention of delinquency stands out with striking clearness."

²² Gosney, C. S., *Sterilization for Human Betterment* (1929), p. 21.

²³ *Id.* at 130. "Sterilization starts where contraceptives stop. It is applied primarily to persons without intelligence, emotional stability or self-control to handle contraceptives successfully. In such cases sterilization succeeds where contraceptives would fail."

²⁴ Davies, *supra* note 4, at 87. "From his experience as medical director of the municipal court in Boston, Dr. V. V. Anderson wrote in 1917: 'The feeble-minded possibly form the most important single group of which our courts need take cognizance. They furnish a substantive nucleus to that most expensive body of individuals who clog the machinery of Justice, who spend their lives in and out of penal institutions and furnish data for the astonishing facts of recidivism.'"

duce more criminals.²⁸ By sterilizing the mentally deficient we are checking crime at its source. We are not permitting children to be born in an environment entirely unsuited for the development of a normal personality. It is not, however, to be inferred that depriving the mentally deficient persons of parenthood will herald the end of crime, but it will be a huge step toward the prevention of crime, the clearance of our slums, and the betterment of society.

It is submitted that the mentally deficient should be permitted to marry, to remain as functioning members of society, to be free individuals and not prisoners in an institution, but only after they have been sterilized.

JAY F. ARNOLD.

CRIMINAL NEGLIGENCE—IN THE USE OF FIREARMS AND AUTOMOBILES

Any negligence, whether civil or criminal, is based upon the violation of some duty. As a crime is an offense against the state, criminal negligence is imposed for the violation of some duty owed to the state.¹ This duty may be violated in the negligent commission of an act,² or in the negligent omission of an act.³ It is elementary to say that the state is interested in the preservation of the lives of its members and that each individual owes it a duty so to limit and control his conduct as not to cause the death or great bodily harm of another.⁴ This duty may arise in various ways. It may be voluntarily assumed.⁵

We have learned from experience that firearms are dangerous to life. One who takes upon himself the responsibility of using firearms assumes voluntarily, a duty not to injure others.⁶ While automobiles are not considered dangerous instrumentalities, they are yet the

²⁸ Healey and Bronner, *supra* note 21, at 216. "That unless the stream of delinquency is checked at or near its source, its progressive flow represents a cost to society, vast in its negative and positive aspects, in non-contribution to society by the offender as well as the actual outlay for his arrests, trials, attempted reformation, and safe keeping." Sutherland, *supra* note 9, at 618. "The logical policy in regard to crime is the policy of prevention. Punishment is at best, a method of defense; prevention is a method of offense. It is evidently futile to continue to take the individuals out of the situation in which they become criminals, punish them, and permit the situation to remain in other respects as they were. A case of delinquency is more than a physiological act of an individual; it involves a whole network of social relations, and if we deal with that whole set of social relations we shall be working to prevent crime.

¹ Miller, *Criminal Law* (1934) 65.

² Banks v. State, 85 Tex. Cr. Rep. 165, 211 S. W. 217 (1919).

³ State v. O'Brien, 32 N. J. Law 169 (1867).

⁴ Stephens, *Digest Criminal Law* (1877) 158.

⁵ Miller, *op cit.*, *supra* note 1.

⁶ Saye v. State, 50 Tex. Cr. Rep. 569, 99 S. W. 551 (1907).