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## Taking Eugenics Seriously: Three Generations of ??? are Enough?

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# FLORIDA STATE UNIVERSITY LAW REVIEW



## TAKING EUGENICS SERIOUSLY: THREE GENERATIONS OF ??? ARE ENOUGH?

*Paul A. Lombardo*

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# TAKING EUGENICS SERIOUSLY: THREE GENERATIONS OF ??? ARE ENOUGH?

PAUL A. LOMBARDO\*

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It will, I think, be clear to anyone who examines the records of the period from 1900 to about the middle thirties that the manner in which the eugenics movement developed cast a long shadow over the growth of sound knowledge of human genetics . . . .

. . . . [T]he history of connections between eugenics and human genetics has a special relevance. The connections were very close, and were especially evident in the United States, where interest in both fields was widespread at the turn of the century. Human genetics was often treated as part of eugenics, or as it was often called, human betterment or race improvement. It was that part concerned with acquisition of knowledge of human heredity. The association tended to be maintained because both subjects were frequently pursued and often taught by the same persons.<sup>1</sup>

This selection was taken from the Presidential address of L.C. Dunn, delivered at the 1961 meeting of the American Society of Human Genetics. Dunn (1893-1974) was particularly well positioned to survey his field's history for fellow geneticists, since his life and career spanned the entire period during which genetic study was initiated, developed, and took its place among the sciences. His comments on the role of eugenics were also especially noteworthy because he knew all of the major scientists who played a part in the early years of genetics, and many of them were the people he described as having "pursued and often taught" both eugenics and genetics.<sup>2</sup>

In the early decades of the twentieth century, Dunn noted, the excitement surrounding the scientific discoveries that seemed to have such a direct application to human development fed the eugenics movement. "Rapid translations of new knowledge into terms applicable to improvements of man's lot is at such times," Dunn warned, "likely to take precedence over objective and skeptical evaluation of the facts."<sup>3</sup> Dunn was concerned that this tendency, like other "de-

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1. L.C. Dunn, *Cross Currents in the History of Human Genetics*, 14 AM. J. HUM. GENETICS 1, 3-4 (1962).

2. *Id.* at 4.

3. *Id.* at 2.

fects seen in the adolescent period of human genetics,” had not disappeared—even late in his own career.<sup>4</sup> Much of what Dunn said more than forty years ago is pertinent today, in the headlong rush to apply the insights gleaned from genetic research.

Dunn’s 1961 speech reminds us of a point too often forgotten in today’s excitement over the explosive growth of genetics as a subject of scientific study, cultural fascination, and commercial potential. The field of genetics has a history. Part of that history, so clearly described by Dunn, is its simultaneous growth alongside and inextricable linkage to the eugenics movement. How we remember that history, or whether we choose to remember it at all, is a matter of consequence in public policy debates about the uses of new genetic technologies and the insights derived from genetic research.

This Article begins by examining a recent milestone in the history of genetics, and another in the history of eugenics. These events, the sequencing of the human genome and a governmental apology for eugenic abuses, were ironically juxtaposed by their coincidental, simultaneous occurrence within the recent past. The recent erection of an historical marker commemorating the 1927 Supreme Court decision in *Buck v. Bell* is described in this segment of the Article. The Article continues with an explanation of the popularity of eugenics at the turn of the last century, and it details the involvement of some early, hopeful adherents to the field. It then turns to the dark side of eugenics, exemplified by the writing of Charles Davenport, revealing how his colleagues, Lucien Howe and Harry Laughlin, planned to advocate legal restrictions to prevent the marriages of blind people.

Next, the role of Harvey Jordan provides a link between infant mortality prevention campaigns and medical education, yielding another example of how varied the understanding of eugenics was. Current uses of the word “eugenics” among geneticists and counselors show how uniform the distaste for the term is today. The Article concludes with a return to the *Buck* case and a discussion of the problem of historic moralism.

#### I. GENETICS/EUGENICS IN THE PRESS

The second week of February 2001 saw the juxtaposition of two significant milestones in the history of genetics. The first involved the ongoing drama of scientific conquest known to the world as the Human Genome Program. In prearranged, simultaneous publications, the prestigious journals *Science* and *Nature* presented special editions announcing the completion of the sequencing of the Human Genome.

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4. *Id.* at 3.

*Science* said that sequencing of the genome provided a “powerful tool for unlocking the secrets of our genetic heritage and for finding our place among the other participants in the adventure of life.”<sup>5</sup> The issue focused on the efforts of Craig Venter and the private sector entrepreneurs of Celera Genomics,<sup>6</sup> whose work provided a competitive tension for researchers from government-funded laboratories. *Science* reminded its readers that the public announcement of this achievement coincided with the anniversary week of the birth of Charles Darwin,<sup>7</sup> setting genetics in the historical context of evolutionary theory and emphasizing how the sequencing effort had “built on the scientific insights of centuries of investigators.”<sup>8</sup>

*Nature* chose to focus on the publicly funded collaborative led by Francis Collins of the National Human Genome Research Institute of the National Institutes of Health.<sup>9</sup> Like its counterpart, *Nature* also recalled the history of genetics. It described the “scientific quest” that began with the “rediscovery of Mendel’s laws of heredity” early in the twentieth century, launching the race “to understand the nature and content of genetic information that has propelled biology for the last hundred years.”<sup>10</sup> *Science* and *Nature* led the coverage of the genome-sequencing story, and February 2001 was filled with an avalanche of headlines in the national and international press marking this milestone in genomic research.

Not surprisingly, a search of the text of the Genome editions of *Nature* and *Science* issued that triumphant week revealed no mention of the dark term “eugenics.” Yet the same week of the media’s genomania, the Virginia General Assembly passed a resolution that evoked memories of historical events also linked to genetic science, but attracting significantly less media attention. The resolution *Expressing the General Assembly’s Regret for Virginia’s Experience with Eugenics*<sup>11</sup> was introduced by Mitch Van Yahres, who represents the

5. Barbara R. Jasny & Donald Kennedy, *The Human Genome*, 291 *SCI.* 1153, 1153 (2001).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*; International Human Genome Sequencing Consortium, *Initial Sequencing and Analysis of the Human Genome*, 409 *NATURE* 860, 860 (2001).

10. *Id.*

11. H.D.J. Res. 607, 2001 Gen. Assem., Reg. Sess. (Va. 2001):

Agreed to by the House of Delegates, February 2, 2001

Agreed to by the Senate, February 14, 2001

WHEREAS, the now-discredited pseudo-science of eugenics was based on theories first propounded in England by Francis Galton, the cousin and disciple of famed biologist Charles Darwin; and

WHEREAS, the goal of the “science” of eugenics was to improve the human race by eliminating what the movement’s supporters considered hereditary disorders or flaws through selective breeding and social engineering; and

city of Charlottesville in the Virginia House of Delegates.<sup>12</sup> Van Yahres argued that an examination of the past was critical at a time when we “face a future marked by great advances in understanding of genetics,” and he emphasized that education is needed to avoid similar scientific disasters in the future.<sup>13</sup> Commentary accompanying the Van Yahres statement reminded readers that his “warning seemed especially topical amid news about the first analyses of the human genome being published in scientific journals.”<sup>14</sup>

The legislative response followed an extraordinary series of page one articles in the *Richmond Times-Dispatch* by journalist Peter Hardin describing Virginia’s history during the eugenics movement.

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WHEREAS, the eugenics movement proved popular in the United States, with Indiana enacting the nation’s first eugenics-based sterilization law in 1907, closely followed by Connecticut; and

WHEREAS, in 1924 Virginia passed two eugenics-related laws, the first, the Racial Integrity Act, defined a white person as having no trace of black blood and made it illegal for whites and non-Caucasians to marry; and

WHEREAS, the second 1924 measure permitted involuntary sterilization, the most egregious outcome of the lamentable eugenics movement in the Commonwealth; and

WHEREAS, under this act, those labeled “feebleminded,” including the “insane, idiotic, imbecile, feebleminded or epileptic” could be involuntarily sterilized, so that they would not produce similarly disabled offspring; and

WHEREAS, in practice, the eugenics laws were used to target virtually any human shortcoming or malady, including alcoholism, syphilis and criminal behavior; and

WHEREAS, still another regrettable aspect of the eugenics laws was their use as a respectable, “scientific” veneer to cover activities of those who held blatantly racist views; and

WHEREAS, in a landmark 1927 decision, the United States Supreme Court upheld Virginia’s involuntary sterilization of Carrie Buck, in an 8-1 ruling written by Justice Oliver Wendell Holmes; and

WHEREAS, from then until 1979, Virginia involuntarily sterilized some 8,000 people, with estimates of the precise number ranging from 7,450 to 8,300; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the General Assembly expresses its profound regret over the Commonwealth’s role in the eugenics movement in this country and the incalculable human damage done in the name of eugenics; and, be it

RESOLVED FURTHER, That the General Assembly urge the citizens of the Commonwealth to become familiar with the history of the eugenics movement, in the belief that a more educated, enlightened and tolerant population will reject absolutely any such abhorrent pseudo-scientific movement in the future.

*Id.*

12. Initial language for the resolution was suggested by Delegate Kenneth Plum, Virginia legislator from Northern Virginia. Personal communication from Kenneth Plum to the author (July 20, 2001).

13. Peter Hardin, *Eugenics Edict Goes to Senate*, RICHMOND TIMES-DISPATCH, Feb. 13, 2001, at A1.

14. *Id.* Stories also noted how anti-abortion advocates wishing to include language linking Planned Parenthood founder Margaret Sanger to the eugenics movement were disappointed in their attempt to amend the resolution. See Pamela Stallsmith, *House ‘Regrets’ Eugenics*, RICHMOND TIMES-DISPATCH, Feb. 3, 2001, at A1; see also *Va. Eugenics Victim Seeks an Apology*, DAILY PROGRESS (Charlottesville), Feb. 6, 2001, at B1.

Hardin's series analyzed the Virginia eugenic experience, including the "Racial Integrity" legislation that prohibited interracial marriage and was later used to erase whole tribes of the state's Native American population from demographic records,<sup>15</sup> and the state's eugenical sterilization law, upheld by the U.S. Supreme Court in the infamous case of *Buck v. Bell*.<sup>16</sup> The drama of Hardin's story was heightened by an Associated Press reporter who provided a modern face to eugenic history when he located Raymond Hudlow, a man sterilized under eugenics laws who later won medals for heroism during the Korean War.<sup>17</sup>

Looking forward to the November 2001 elections, three gubernatorial candidates pledged to issue a formal apology for Virginia's eugenic past.<sup>18</sup> The pledge was made particularly noteworthy by the comments of then-Lieutenant Governor John Hager, a man with paraplegia. He emphasized the potential for both the positive and negative impact of science: "While the advocates of eugenics felt they were on the cutting edge of science, it was a terrible example of how science can be misused."<sup>19</sup>

Charlottesville, Virginia was the hometown of Carrie Buck, a party in the 1927 U.S. Supreme Court case of *Buck v. Bell*,<sup>20</sup> and the first person to be sterilized in Virginia following that decision. Press attention in Charlottesville<sup>21</sup> echoed the debate on eugenics occurring in the halls of the Virginia legislature.<sup>22</sup> Several stories detailed the controversy that arose when the original Van Yahres bill calling for an "apology" by the state was introduced.<sup>23</sup> Some citizens who testified against the resolution had specific complaints. One descendant of Cherokee Indians rejected the measure for not going far enough in

15. Peter Hardin, *Documentary Genocide*, RICHMOND TIMES-DISPATCH, Mar. 5, 2000, at A1; Peter Hardin, *Seeking Sovereignty: Indians Face Barriers, See Benefits in Quest*, RICHMOND TIMES-DISPATCH, Mar. 6, 2000, at A1; Peter Hardin, *Segregation's Era of Silence*, RICHMOND TIMES-DISPATCH, Nov. 26, 2000, at A1; Peter Hardin, *Virginia Indians Muster Support for Sovereignty*, RICHMOND TIMES-DISPATCH, Mar. 19, 2000, at A1.

16. *Buck v. Bell*, 274 U.S. 200 (1927). See generally Paul A. Lombardo, *Three Generations, No Imbeciles: New Light on Buck v. Bell*, 60 N.Y.U. L. REV. 30 (1985).

17. *Va. Eugenics Victim Seeks an Apology*, *supra* note 14; see also Bill Baskerville, *Phony Science Rendered 60,000 Americans Sterile*, RICHMOND TIMES-DISPATCH, Mar. 19, 2000, at C1.

18. Peter Hardin, *Rivals Support Apology by State*, RICHMOND TIMES-DISPATCH, Dec. 13, 2000, at A1.

19. *Id.*

20. 274 U.S. 200 (1927).

21. Bob Gibson, *Va. Senate to Mull Eugenics Bill*, DAILY PROGRESS (Charlottesville), Feb. 11, 2001, at A1; Bob Gibson, *Van Yahres Calls for Apology*, DAILY PROGRESS (Charlottesville), Jan. 14, 2001, at B1; *Sterilizations Forced by State Merit Apology*, DAILY PROGRESS (Charlottesville), Dec. 19, 2000, at A10.

22. Peter Hardin, *Confronting an Ugly Legacy*, RICHMOND TIMES-DISPATCH, Feb. 12, 2001, at A1; Peter Hardin, *Eugenics Effort Denounced*, RICHMOND TIMES-DISPATCH, Feb. 15, 2001, at A1; Stallsmith, *supra* note 14.

23. See, e.g., Hardin, *supra* note 13; Stallsmith, *supra* note 14.

condemning state officials who used eugenic legislation to persecute Native Americans.<sup>24</sup> From a dramatically contrasting perspective, a representative of the National Organization for European American Rights rejected any negative references to eugenics, particularly any condemnation of the “Racial Integrity” laws that had prohibited interracial marriage.<sup>25</sup>

Legislators also raised opposition. Repeating a common objection, one lawmaker rejected the critique of past eugenic policies, since sterilization was “[a]t the time . . . legal.”<sup>26</sup> Others saw no benefit in revisiting past injustices, and objected to “stirring up some history that none of us are proud of.”<sup>27</sup> According to the *Washington Post*, Virginia leaders usually prefer to celebrate the state’s role as the birthplace of Presidents, and rarely find time to recall the state’s “prominent role in such historic evils as slavery, segregation and forced sterilizations.”<sup>28</sup> That Virginia was addressing its eugenic history at all was a subject worthy of comment to the *Post*, which saw the legislative resolution as “a remarkable moment.”<sup>29</sup>

Predictably, the compromise emerging from the legislative debate did not satisfy everyone. The General Assembly eventually deleted the word “apology” in favor of a diluted declaration of “profound regret.”<sup>30</sup> The resolution finally adopted by the Virginia Senate on February 14, 2001, was criticized as an inadequate response to living victims of eugenic laws. Highlighting the links that legislators made between old and new renditions of genetic science, a newspaper in Europe condemned eugenics as “genetic engineering at its very worst.”<sup>31</sup> That paper described the legislative resolution as Virginia’s attempt at “saying sorry, sort of.”<sup>32</sup>

Thus, the connections between the historical misuse of science and the current rush of new technologies were made patent by news analysis and public comment. Local stories of Virginia’s eugenic history shared page one space with the Francis Collins and Craig

24. Hardin, *supra* note 13, at A1 (featuring comments of Deborah Skicim in opposition to eugenics resolution).

25. *Id.* (featuring comments of Ron Doggett of the Virginia Chapter of the National Organization for European American Rights).

26. Stallsmith, *supra* note 14, at A1.

27. Hardin, *supra* note 13, at A1 (featuring comments of State Senator Warren E. Barry).

28. Craig Timberg, *Va. House Voices Regrets for Eugenics*, WASH. POST, Feb. 3, 2001, at A1.

29. *Id.*

30. *Id.*

31. David Osborne, *Virginia State Now Regrets Sterilising the ‘Feeble-minded,’* INDEPENDENT (London), Feb. 16, 2001, at 17 (featuring remarks of State Senator Patricia Ticer).

32. *Id.*



Venter news conference on the sequencing of the human genome.<sup>33</sup> Editorial writers, echoing *Heart of Darkness* author Joseph Conrad, spoke of “The Horror” of eugenics, characterizing it as a “past manipulation of the human gene pool.”<sup>34</sup> They cheered potentially “wondrous and welcome” developments such as gene therapy, while warning against the “far more troubling” prospects of amniocentesis and genetic screening to “prevent the birth of children with serious physical defects—eugenics by pre-emption.”<sup>35</sup>

In the months following Virginia’s resolution “of profound regret,” even more public attention was given to eugenics.<sup>36</sup> A state committee stripped the name of Dr. Joseph DeJarnette from a building at a state mental hospital. DeJarnette ran the institution for more than fifty years, all the while publicly advocating sterilization of his patients. His most noteworthy comments included support of Nazi sterilization from 1933 until the beginning of World War II, in 1939.<sup>37</sup> Removing the name of self-proclaimed “Sterilization DeJarnette”<sup>38</sup> from the building led to protests that the state was “steriliz[ing] . . . history.”<sup>39</sup> A newspaper in Virginia’s neighboring state of North Carolina considered the need for apologizing for its eugenic history;<sup>40</sup> another in Maryland termed the Virginia saga “a lesson in ethics for our brave new world.”<sup>41</sup> The legal press also weighed in, placing Virginia’s *Buck* decision, along with *Dred Scott v. Sandford*,<sup>42</sup> *Plessy v. Ferguson*<sup>43</sup> and *Korematsu v. United States*,<sup>44</sup> within a “dubious pantheon” as one of the Supreme Court’s “biggest blunders.”<sup>45</sup> According to *Legal Times*, the movement for a Virginia apology raised “uncom-

33. See Hardin, *supra* note 13, at A1; A.J. Hostetler, ‘Book of Life’ a Real Stunner, RICHMOND TIMES-DISPATCH, Feb. 13, 2001, at A1.

34. *The Horror*, RICHMOND TIMES-DISPATCH, Feb. 20, 2001, at A10.

35. *Id.*

36. Peter Hardin, *Hospital’s Name Changed*, RICHMOND TIMES-DISPATCH, Mar. 23, 2001, at A1.

37. Paul A. Lombardo, *Involuntary Sterilization in Virginia: From Buck v. Bell to Poe v. Lynchburg*, 3 DEV. MENTAL HEALTH L. 13, 20 (1983).

38. *Id.* at 19.

39. Hardin, *supra* note 36, at A1; see also Peter Hardin, ‘Lifelong service to . . . Va.’: DeJarnette Picture Distorted, Kin Says, RICHMOND TIMES-DISPATCH, Mar. 22, 2001, at A1; Peter Savodnik, *Mental Hospital Gets New Name*, DAILY PROGRESS (Charlottesville), Mar. 23, 2001, at A1. Apparently, similar controversy has touched France concerning a proposal to rename a French street currently honoring Nobel Prize winner Alexis Carrel, a “fervent advocate of eugenics and a supporter of the collaborationist Vichy government during World War II.” *Some French Rue Street Name*, 279 SCI. 485, 485 (1998). See also Andres Horacio Reggiani, *Alexis Carrel, the Unknown: Eugenics and Population Research under Vichy*, 25 FRENCH HIST. STUD. 300, 331-56 (2000).

40. Bonnie Rochman, *Sterilized by State Order*, NEWS & OBSERVER (Raleigh), Apr. 15, 2001, at 21A.

41. Michael Ollove, *The Lessons of Lynchburg*, BALT. SUN, May 6, 2001, at 6F.

42. 60 U.S. (19 How.) 393 (1856).

43. 163 U.S. 537 (1896).

44. 323 U.S. 214 (1944).

45. Tony Mauro, *In the Shadows of History*, LEGAL TIMES, Feb. 26, 2001, at 12.

fortable reminders of the Supreme Court's role."<sup>46</sup>

As 2001 drew to an end, popular attention to the history of eugenics continued. Newspapers in other parts of the country pursued the eugenics story, recounting the debate in Virginia and finding other people who had been sterilized.<sup>47</sup> Disability rights groups pressed newly-elected Governor Mark Warner for the apology he promised during his gubernatorial campaign, and the coincident 75th anniversary of the Supreme Court decision in *Buck v. Bell* gave rise to more legislative activity. In the 2002 legislative session, a resolution was passed specifically honoring the name of Raymond Hudlow,<sup>48</sup> a eugenics victim and war hero. A second resolution, calling the *Buck* decision the "embodiment of bigotry against the disabled," was drafted to honor "the memory of Carrie Buck on the occasion of the

46. *Id.*

47. See, e.g., Stephen Buckley, 'Human Weeds,' ST. PETERSBURG TIMES (Florida), Nov. 11, 2001, at A1.

48. S.J. Res. 79, 2002 Gen. Assem., Reg. Sess. (Va. 2002).

*Commending Raymond W. Hudlow.*

Agreed to by the Senate, January 17, 2002

Agreed to by the House of Delegates, January 25, 2002

WHEREAS, the now-discredited pseudo-science of eugenics was based on theories first propounded in England by Francis Galton, the cousin and disciple of famed biologist Charles Darwin; and

WHEREAS, in 1924, Virginia passed two eugenics-related laws, the second of which permitted involuntary sterilization, the most egregious outcome of the lamentable eugenics movement in the Commonwealth; and

WHEREAS, under this act, those labeled "feeble-minded," including the "insane, idiotic, imbecile, feeble-minded or epileptic" could be involuntarily sterilized, so that they would not produce similarly disabled offspring; and

WHEREAS, in 1941, Raymond Hudlow, a 16-year-old boy who repeatedly ran away from home to escape an abusive father, was committed to the Virginia Colony for Epileptics and Feeble-minded near Lynchburg; and

WHEREAS, on June 17, 1942, an Amherst County Circuit Court judge granted the Virginia Colony's request that Raymond Hudlow be sterilized; and

WHEREAS, in October of 1943, Raymond Hudlow was released from the Virginia Colony, was drafted into the United States Army two months later, and in August 1944, was at Omaha Beach in France two months after D-Day; and

WHEREAS, Raymond Hudlow saw combat in France, Belgium, and Holland, was wounded in the left knee and captured by the Germans, was in various prison camps for seven months before being liberated by the Russians, and was awarded the Bronze Star for Valor, the Purple Heart, and the Prisoner of War Medal; and

WHEREAS, Raymond Hudlow, who served honorably in the United States Army and Air Force for 21 years, now lives in Campbell County; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the General Assembly hereby commend Raymond W. Hudlow for his distinguished military career and for his service to the nation during World War II; and, be it

RESOLVED FURTHER, That the Clerk of the Senate prepare a copy of this resolution for presentation to Raymond W. Hudlow as an expression of the General Assembly's admiration for his courage, determination, and patriotism.

*Id.*

75th anniversary of the *Buck v. Bell* Supreme Court decision.”<sup>49</sup> As the Virginia legislature debated memorial resolutions, other concerns about eugenics filled the legislative chambers. Lawmakers considered establishing a committee to study ethical, medical and scientific issues relating to stem cell research and highlighted “eugenic formulations” already used to screen stem cells.<sup>50</sup>

The media also monitored the impending date of May 2, 2002, which provided an occasion for the dedication of a state historical marker recalling the Holmes opinion in *Buck* exactly 75 years earlier.<sup>51</sup> As the anniversary date approached, the media again recalled the *Buck* case as a reference point for reflecting on uses of the new

49. H.D.J. Res. 299, 2002 Gen. Assem., Reg. Sess. (Va. 2002).

*Honoring the memory of Carrie Buck.*

Agreed to by the House of Delegates, February 1, 2000

Agreed to by the Senate, February 7, 2002

WHEREAS, in 1924 Virginia passed two eugenics-related laws, the second of which permitted involuntary sterilization, the most egregious outcome of the lamentable eugenics movement in the Commonwealth; and

WHEREAS, under this act, those labeled “feeble-minded,” including the “insane, idiotic, imbecile, feeble-minded or epileptic” could be involuntarily sterilized, so that they would not produce similarly disabled offspring; and

WHEREAS, May 2, 2002, is the 75th anniversary of the United States Supreme Court decision in the case of *Buck v. Bell*, in which Virginia’s 1924 Eugenic Sterilization Act was allowed to stand; and

WHEREAS, following the *Buck* decision, an estimated 60,000 Americans, including about 8,000 in Virginia, were sterilized under similar state laws, and the decision was applauded by German eugenicists who supported comparable legislation early in the Nazi regime; and

WHEREAS, in 1927 Carrie Buck, a poor and unwed teenage mother from Charlottesville, was the first person sterilized under the provision of the 1924 law; and

WHEREAS, subsequent scholarship has demonstrated that the Sterilization Act was based on the now-discredited and false science of eugenics; and

WHEREAS, legal and historical scholarship analyzing the *Buck* decision has condemned it as an embodiment of bigotry against the disabled and an example of the use of faulty science in support of public policy; and

WHEREAS, that scholarship has also pointed out the fallacies contained in the *Buck* opinion, noting, among other points, that Carrie Buck’s daughter, Vivian, the supposed third-generation “imbecile,” later won a place on her school’s honor roll; and

WHEREAS, the General Assembly in 2001 expressed its “profound regret” over the Commonwealth’s role in the eugenics movement in this country and over the damage done in the name of eugenics; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the General Assembly honor the memory of Carrie Buck on the occasion of the 75th anniversary of the *Buck v. Bell* Supreme Court decision.

*Id.*

50. H.D.J. Res. 148, 2002 Gen. Assem., Reg. Sess. (Va. 2002) (establishing a committee “to study ethical, medical, and scientific issues relating to stem cell research”).

51. Tony Mauro, *A Case to Remember*, LEGAL TIMES, Apr. 15, 2002, at 20; Carlos Santos, *Historic Test Case: Wrong Done to Carrie Buck Remembered*, RICHMOND TIMES-DISPATCH, Feb. 17, 2002, at B1.

genetic technologies.<sup>52</sup> Journalists in other states focused on home-grown stalwarts of the eugenics movement, such as Harry Laughlin of Missouri, author of the *Model Eugenical Sterilization Law*, as they explored explicit parallels between the old eugenics and the new genetics.<sup>53</sup> The day before the *Buck* memorial event, people gathered in Lynchburg, Virginia—not far from the site of the institution formally known as the Virginia Colony for Epileptic and Feeble-minded—to present Raymond Hudlow with a copy of the legislative resolution passed in his honor.<sup>54</sup>

In Carrie Buck's hometown of Charlottesville, a short drive from the cemetery where she was buried, the Virginia Department of Historic Resources erected a marker fronting a main thoroughfare just around the corner from the school Buck's daughter, Vivian, attended. The text of the Virginia Historic marker commemorating *Buck v. Bell* carries this inscription:

BUCK V. BELL

In 1924, Virginia, like a majority of states then, enacted eugenic sterilization laws. Virginia's law allowed state institutions to operate on individuals to prevent the conception of what were believed to be "genetically inferior" children. Charlottesville native Carrie Buck (1906-1983), involuntarily committed to a state facility near Lynchburg, was chosen as the first person to be sterilized under the new law. The U.S. Supreme Court, in *Buck v. Bell*, on 2 May 1927, affirmed the Virginia law. After Buck more than 8,000 other Virginians were sterilized before the most relevant parts of the act were repealed in 1974. Later evidence eventually showed that Buck and many others had no "hereditary defects." She is buried south of here.<sup>55</sup>

Governor Mark Warner chose the *Buck* anniversary to fulfill his campaign promise. His official apology made Virginia unique among the more than thirty American States that performed sterilizations using laws validated by the *Buck* decision. His statement of apology was read at the dedication ceremony.<sup>56</sup>

52. Peter Hardin, *Eugenics Gains Second Chance? New Age of Genetics Spurs Debate*, RICHMOND TIMES-DISPATCH, Apr. 27, 2002, at A1.

53. E.g., Eric Adler, *Shame Lingers Decades After Missourian Shaped Eugenics Movement*, KAN. CITY STAR, Apr. 27, 2002, at A1.

54. Carlos Santos, *Sterilized War Hero Honored*, RICHMOND TIMES-DISPATCH, May 2, 2002, at B1.

55. *Buck v. Bell* Historic Marker, located at 800 Preston Avenue, Charlottesville, VA, 22903.

56. Peter Hardin, *Apology for Eugenics Set: Warner Action Makes Virginia First State to Denounce Movement*, RICHMOND TIMES-DISPATCH, May 2, 2002, at A1. The Warner apology read as follows:

I am sorry that I am unable to be with you on this important occasion. In 1924, Virginia, like many states, passed a law permitting involuntary sterilization.

The history of eugenics and its contemporary genetic links reverberated through the articles commenting on the *Buck* marker.<sup>57</sup> Charlottesville's *Daily Progress* reported Delegate Mitch Van Yahres' intention to expose the state's school children to the history of eugenics.<sup>58</sup> This coverage held particular poignancy because in 1927, the same paper applauded the *Buck* decision and praised the Holmes opinion as "a genuine classic," while judging the sterilization law "sane," "beneficial" and "progressive."<sup>59</sup> A similar turnaround was evident in the *Richmond Times-Dispatch*, which provided vigorous support for eugenics legislation in the 1920's. In addition to the prominent placement of articles on the history of eugenics noted above, that newspaper ran an editorial entitled simply *Eugenics*. It condemned "[g]reat crimes . . . committed in the name of progress," and "dubious theories" that provided justification for "state-sanctioned butchery," as a part of recent history.<sup>60</sup>

Just how recent was brought home by the presence of two people at the *Buck* marker ceremony who had endured sterilization at the Virginia Colony. As the guests of honor at the event, Mr. Jesse Meadows and Mrs. Rose Brooks helped to unveil the *Buck v. Bell* marker. Their photos and comments to reporters were distributed worldwide via news service reports and feature articles in papers such as the *Washington Post*<sup>61</sup> and the *Los Angeles Times*,<sup>62</sup> as well as

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In 1927, Carrie Buck was the first person sterilized by the Commonwealth pursuant to that law. Virginia's actions were upheld by the Supreme Court of the United States, and the government ultimately sterilized approximately 8,000 people.

Last year, the General Assembly passed a resolution expressing profound regret for the Commonwealth's role in the eugenics movement. Today, I offer the Commonwealth's sincere apology for Virginia's participation in eugenics. As I have previously noted, the eugenics movement was a shameful effort in which state government never should have been involved.

We must remember the Commonwealth's past mistakes in order to prevent them from recurring. This highway marker will serve as a constant reminder of how our government failed its citizens and how we must always strive to do better.

Governor Mark R. Warner, *Written Statement on the 75th Anniversary of the Buck v. Bell Decision* (May 2, 2002), at [http://www.governor.state.va.us/press\\_policy/releases/may2002/may0202.htm](http://www.governor.state.va.us/press_policy/releases/may2002/may0202.htm) (last visited Jan. 13, 2003) (on file with author).

57. E.g., Bill Branigin, *Warner Apologizes to Victims of Eugenics: Woman Who Challenged Sterilizations Honored*, WASH. POST, May 3, 2002, at B1; Tony Mauro, *Did Eugenics Foreshadow Genetic Engineering?*, USA TODAY, May 2, 2002, at 11A; Carlos Santos, *A Sad Reminder: Marker Honors State's 1st Eugenics Victim*, RICHMOND TIMES-DISPATCH, May 3, 2002, at B1.

58. Bob Gibson, *A Shameful Effort: Governor Apologizes for Sterilization Law*, DAILY PROGRESS (Charlottesville), May 3, 2002, at A1.

59. *Safely Through the Gamut*, DAILY PROGRESS (Charlottesville), May 3, 1927, at 4.

60. *Eugenics*, RICHMOND TIMES-DISPATCH, May 8, 2002, at A12.

61. Leef Smith, *Robbed of the Promise of Life: Victim of Va.'s Old Sterilization Law Says Amends Can't End Pain Over Loss*, WASH. POST, May 13, 2002, at B1.

62. Deborah Blum, *Reproductive Wrongs*, L.A. TIMES, May 12, 2002, at M6.

news reports on *National Public Radio*<sup>63</sup> and the *British Broadcasting Corporation*.<sup>64</sup> Describing the marker ceremony, these stories noted that operations on Virginia Colony inmates continued from the time of Carrie Buck's case in 1927 until 1979.<sup>65</sup>

Despite the fact that more than 60,000 Americans were sterilized over seven decades in the twentieth century, Virginia is now alone among the more than thirty states where sterilizations took place to officially recognize and condemn past policy through a legislative resolution and the Governor's apology.<sup>66</sup> No U.S. State has compensated a sterilization victim.

## II. WHY EUGENICS IS ONE OF HISTORY'S DIRTY WORDS

The *Buck* case and related laws to permit state-sponsored sterilization provide a touchstone for discussions of the eugenics movement. While the word itself had many meanings to the variety of people who used it early in the twentieth century, it is employed almost exclusively today as a pejorative term to signal coercive state measures.<sup>67</sup> Connections between eugenic ideology and the Nazi Holocaust, along with the sterilization history recounted above, explain much of the contemporary negative reaction to the term "eugenics." The racist focus of much of the eugenics movement provides even more reason for the negative connotations of the term. An instructive view of the dark side of the science concerned with "better breeding" can begin with a look at the careers of some U.S. eugenicists.<sup>68</sup> Prominent among them was Charles B. Davenport.

Davenport represented the public face of eugenics in America

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63. *All Things Considered: Eugenics* (NPR Radio Broadcast, May 3, 2002) (Robert Siegel interview of Stephen Selden, University of Maryland, concerning eugenics history), at <http://www.npr.org/ramfiles/atc/20020503.atc.07.ram> (audio file).

64. *Virginia Apologises for Eugenics Policy*, BBC NEWS, May 3, 2002, at <http://news.bbc.co.uk/1/hi/world/americas/1965811.stm> (last visited Jan. 13, 2003) (on file with author).

65. Blum, *supra* note 62; Smith, *supra* note 61.

66. As this Article was going to press, Governor John Kitzhaber made Oregon the second state to officially apologize for its history of sterilizations. See Julie Sullivan, *State Sorry for Great Wrong*, OREGONIAN, Dec. 3, 2002, at A1, available at [http://www.oregonlive.com/news/oregonian/index.ssf/?xml/story.ssf/html\\_standard.xsl?base/front\\_page/1038972011190220.xml](http://www.oregonlive.com/news/oregonian/index.ssf/?xml/story.ssf/html_standard.xsl?base/front_page/1038972011190220.xml) (last visited Dec. 12, 2002) (on file with author). Additionally, extensive news on North Carolina's recent history of sterilization was revealed in a five part series. See Kevin Begos, *Against Their Will*, WINSTON-SALEM J., Dec. 8-12, 2002, available at <http://www.journalnow.com/wsj/specialreports/againsttheirwill/parts> (last visited Jan. 13, 2003) (on file with author).

67. DIANE B. PAUL, CONTROLLING HUMAN HEREDITY, 1865 TO THE PRESENT 3-4 (1995).

68. See generally CHARLES BENEDICT DAVENPORT, HEREDITY IN RELATION TO EUGENICS 1 (1913).

from 1910 until his death in 1944.<sup>69</sup> He was the Resident Director of the Long Island based Eugenics Record Office (ERO).<sup>70</sup> The ERO was the best-funded and most successful of the organizations that emerged to promote the ideas of the eugenics movement in the first quarter of the twentieth century.<sup>71</sup> Later it would also be associated with some of the most malignant members of the movement, described by today's publications of the Cold Spring Harbor Laboratory (now a center of genomic research) as "self-righteously bigoted."<sup>72</sup>

Davenport was a credentialed member of America's scientific elite. He took his Ph.D. at Harvard in 1892, taught there and at the University of Chicago, and was the Director of the Biological Laboratory of the Brooklyn Institute of Arts and Sciences.<sup>73</sup> He was a member of the National Academy of Sciences, the National Research Council and the American Association for the Advancement of Science.<sup>74</sup> He presided over the Sixth International Congress of Genetics in 1932.<sup>75</sup> He attracted funding for eugenics from the Rockefeller and Carnegie Foundations.<sup>76</sup>

In the early years of the ERO, Davenport's pronouncements on the need for research, education, and legal reform to advance the eugenic cause included extreme rhetoric voiced in strong tones. Davenport delivered a lecture at Yale University less than a year before the formal founding of the ERO that summarized his position on the aims and the format of his brand of eugenics.<sup>77</sup> He proposed a system that would survey family traits. Such a plan would "identify those lines which supply our families of great men."<sup>78</sup> But

[w]e [should] also learn whence come our 300,000 insane and feeble-minded, our 160,000 blind or deaf, the 2,000,000 that are annually cared for by our hospitals and Homes, our 80,000 prisoners and the thousands of criminals that are not in prison, and our 100,000 paupers in almshouses and out.

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69. See Garland E. Allen, *The Eugenics Record Office at Cold Spring Harbor, 1910-1940: An Essay in Institutional History*, 2 OSIRIS 225 (1986).

70. *Id.* at 227.

71. *Id.*

72. DAVID MICKLOS ET AL., *THE FIRST HUNDRED YEARS: A HISTORY OF MAN AND SCIENCE AT COLD SPRING HARBOR* (1988), at <http://www.cshl.org/history/100years-chemical.html> (last visited Oct. 10, 2002) (on file with author).

73. Allen, *supra* note 69, at 227-28.

74. American Philosophical Society, *Charles B. Davenport Papers ca. 1903-1940*, at <http://www.amphilsoc.org/library/browser/d/davenpor.htm> (last visited Nov. 4, 2002) (on file with author).

75. Allen, *supra* note 69, at 228.

76. *Id.* at 264.

77. *Id.* at 230.

78. CHARLES B. DAVENPORT, *EUGENICS: THE SCIENCE OF HUMAN IMPROVEMENT BY BETTER BREEDING* 31 (1910) (read before the American Academy of Medicine, at Yale University, Nov. 12, 1909).

This three or four per cent of our population is a fearful drag on our civilization. Shall we as an intelligent people, proud of our control of nature in other respects, do nothing but vote more taxes or be satisfied with the great gifts and bequests that philanthropists have made for the support of the delinquent, defective and dependent classes? Shall we not rather take the steps that scientific study dictates as necessary to dry up the springs that feed the torrent of defective and degenerate protoplasm?<sup>79</sup>

The results of the research on institutional records and the archives of schools and insurance companies would pave the way for eugenic legislation that would prevent “idiots, low imbeciles, [and] incurable and dangerous criminals” from having children.<sup>80</sup> Preventative methods could include institutional segregation and surgical sterilization.<sup>81</sup> The social prerogative for self-protection extended, according to Davenport, from executing criminals to taking other necessary steps to “annihilate the hideous serpent of hopelessly vicious protoplasm.”<sup>82</sup>

Davenport predicted that preventive medicine—guided by eugenic principles—would replace palliative philanthropy. Bemoaning the “tens of millions” spent to “bolster up the weak and alleviate the suffering of the sick,” he argued for a way to check the “stream of weak and susceptible protoplasm.”<sup>83</sup> Similar sums spent for eugenics would earn the donor the title of “world’s wisest philanthropist” and would “redeem mankind from vice, imbecility and suffering.”<sup>84</sup>

Despite the warnings of other scientists that might have forestalled such a result, Davenport’s early sentiments would characterize the work of the Eugenics Record Office in later years. The malevolent face and horrific connotations of the word “eugenics” would become linked inextricably to the programs developed in this country at the ERO and to the Nazi Holocaust abroad.<sup>85</sup> The careers of Davenport and his associates at the ERO typify what went wrong with eugenics. Its American incarnation became infected with class and race bigotry, and it pointedly ignored the developing scientific data generated through genetic research.<sup>86</sup> Such data often contradicted links eugenicists made between heredity and medical conditions, not

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79. *Id.* at 31-32.

80. *Id.* at 30-31, 33.

81. *Id.* at 34.

82. *Id.*

83. *Id.*

84. *Id.* at 35.

85. For connections between the American eugenics movement and the Nazi Holocaust, see STEFAN KÜHL, *THE NAZI CONNECTION: EUGENICS, AMERICAN RACISM, AND GERMAN NATIONAL SOCIALISM* (1994), and Paul A. Lombardo, *The American Breed: Nazi Eugenics and the Origins of the Pioneer Fund*, 65 ALB. L. REV. 743 (2002).

86. HERBERT SPENCER JENNINGS, *PROMETHEUS OR BIOLOGY AND THE ADVANCEMENT OF MAN* 3, 16-17, 24-25 (1925).



to speak of the more expansive claims that blamed hereditary blight for diverse social problems such as crime and poverty. The agenda of the Eugenics Record Office embraced government coercion as the proper means to enforce a eugenically sanitized population and further stigmatized people with disabilities and their families. While Davenport and his ilk railed against the “socially inadequate,”<sup>87</sup> others within the eugenics movement debated the proper uses of the law as a means of addressing disabling conditions.

### III. LUCIEN HOWE AND THE CAMPAIGN TO ERADICATE “HEREDITARY BLINDNESS”

One medical application of eugenic principles involved proposals for eradication of hereditary blindness. Dr. Lucien Howe had written about the cost of institutional care for the blind as early as 1889, estimating an expenditure of over \$25 million annually.<sup>88</sup> His objective was to take steps toward reducing the number of “[the] most pitiable of human beings, the blind.”<sup>89</sup>

In 1918, Howe wrote to Harry Laughlin, Superintendent of the Eugenics Record Office, asking for advice concerning a new committee that had been appointed by the American Ophthalmological Association.<sup>90</sup> Howe wanted to survey superintendents of schools for the blind and colonies “to which defectives of any kind are sent” to ascertain the cost of people “afflicted with hereditary blindness.”<sup>91</sup>

Howe had already taken a public position on the need for a practical plan “for prevent[ion] to some extent [of] hereditary blindness” in a paper delivered to the American Medical Association.<sup>92</sup> Having surveyed the literature concerning the cost of supporting a blind person, he asserted that much of the “misery and expense could be gradually eradicated by sequestration or by sterilization” of the carriers of hereditary blindness, following the model of laws for the commitment and sterilization of the “feebleminded” already enacted in several

87. Harry Laughlin, *The Socially Inadequate: How Shall We Designate and Sort Them?*, 27 AM. J. SOC. 54, 68 (1921).

88. Lucien Howe et al., *Report of the Committee of the New York State Medical Society on the Causes and Prevention of Blindness*, 14 SCI. 268, 270 (1889).

89. *Id.*

90. See MARK H. HALLER, EUGENICS: HEREDITARIAN ATTITUDES IN AMERICAN THOUGHT 73 (1963). Howe was the President of the Eugenics Research Association in 1928. See THE EUGENICS RESEARCH ASSOCIATION SIXTEENTH ANNUAL MEETING (on file with the American Philosophical Society), available at [http://www.eugenicsarchive.org/html/eugenics/view\\_image.html?252](http://www.eugenicsarchive.org/html/eugenics/view_image.html?252) (last visited Nov. 4, 2002) (on file with author).

91. Letter from Dr. Lucien Howe, President, Eugenics Research Association, to H.H. Laughlin, Superintendent, Eugenics Research Office (July 19, 1918) (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/301-350/311.jpg> (last visited Nov. 4, 2002) (on file with author).

92. Lucien Howe, *The Relation of Hereditary Eye Defects to Genetics and Eugenics*, 70 JAMA 1994, 1994 (1918).

states.<sup>93</sup>

In cooperation with the Committee on Hereditary Blindness of the Section on Ophthalmology of the American Medical Association, which Howe chaired, the Eugenics Record Office completed a survey that was sent to institutions for the blind as well as ophthalmologists in hospitals and private practice. Each respondent was asked to fill out a family pedigree for people who have “hereditary eye defect[s]” and describe “details of eye defect and associated personal traits.”<sup>94</sup>

The results of the survey were incorporated in recommendations that could be used by the American Medical Association to support changes in state marriage laws.<sup>95</sup> By 1921, records of several hundred families had been collected in which some forms of “hereditary eye defects” existed. Howe and Laughlin, though wary of endorsing “radical methods” such as sterilization, were ready with another legislative proposal to recommend “in justice to innocent taxpayers.”<sup>96</sup> They surveyed a number of physicians to solicit their endorsement of a proposed law. The law would allow any taxpayer to demand an injunction to block the issuance of a marriage license to any applicant who had “a visual defect,” or family history of such a condition, making it apparent that “children of such a union are liable to become public charges.”<sup>97</sup> Two experts were to be summoned by the court to examine the prospective spouses. If the experts agreed that there was a likelihood of transmitting familial blindness, the court could require posting of a ten thousand-dollar bond as a condition of the marriage license.<sup>98</sup>

Survey responses varied from those who judged the law a “dead letter,”<sup>99</sup> to others who felt the “abuses and injustice” of such a law

93. *Id.* at 1997.

94. Letter from the Committee on Hereditary Blindness, to Principals and Superintendents of Institutions for the Blind and Ophthalmologists in Hospital and Private Practice (Harry Hamilton Laughlin Papers, on file with the Truman State University Library).

95. Memorandum from the Eugenics Records Office, to the American Medical Association, *Reasons for a Study of Hereditary Blindness and for a Report on it to the Section on Ophthalmology of the American Medical Association* (1918) (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/251-300/272.jpg> (last visited Oct. 20, 2002) (on file with author).

96. Letter from Howard J. Banker, Acting Assistant Director, Eugenics Records Office, to Professor George Arps, Ohio State University (Jan. 6, 1921) (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/251-300/300.jpg> (last visited Nov. 4, 2002) (on file with author).

97. *Id.*

98. Memorandum on the general principle of bonding applicants for marriage license against the production of offspring who would become public charges, 1 (circa 1928) [hereinafter *Memorandum on Marriage License Bond*] (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/251-300/279.jpg> (last visited Nov. 4, 2002) (on file with author).

99. Letter from Dr. A. Edward Davis, to Eugenics Record Office (Jan. 12, 1921) (on file with the American Philosophical Society), at <http://www.eugenicsarchive.org/images/eugenics/normal/301-350/302.jpg> (last visited Nov. 4, 2002) (on file with author).

could not justify the potential beneficial impact.<sup>100</sup> Still others thought the law too tame and wanted an “inclusive law” to address all “unfortunate physical and mental inheritances.”<sup>101</sup> Howe eventually despaired of getting a consensus of medical opinion in favor of the law, and conceded that while he favored sterilization of the blind, “the next best thing is this bonding principle.”<sup>102</sup> Howe and Laughlin hoped that the bonding principle would complement the sterilization law Laughlin advocated.<sup>103</sup> Howe noted that if bonding worked out with the blind, it could be used to prevent the marriage of “any type of socially inadequate offspring,”<sup>104</sup> as Laughlin called his target population for a sterilization law.<sup>105</sup>

When the Eugenics Research Association voted to promulgate the marriage bond law in 1928, the *Boston Post* reported Howe’s plan under the headline “Harvard Scientist Wants Married Couples Bonded.”<sup>106</sup> Though no state adopted the Howe plan, as late as 1942, proposals for “banning marriages between nearsighted people” were made to the American Medical Association in the name of “eugenic mating[s].”<sup>107</sup>

Today the criteria used by Howe and Laughlin to diagnose and/or “predict” hereditary features of blindness would probably evoke scorn from the scientific community. Their theories about the workings of genetics in a eugenics scheme would be labeled “pseudo-science.” But the eugenicists and their colleagues from the scientific establishment would have been astounded to hear that anyone considered eugenics

100. Letter from Dr. Ellice M. Alger, to Mr. Harry H. Laughlin, Superintendent, Eugenics Record Office (January 12, 1921) (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/251-300/299.jpg> (last visited Nov. 4, 2002) (on file with author).

101. Letter from Vard H. Hulen, to Committee on Hereditary Blindness (Jan. 26, 1921) (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/301-350/305.jpg> (last visited Nov. 4, 2002) (on file with author).

102. Letter from Dr. Lucien Howe, to Dr. Davenport and Dr. Laughlin (Feb. 10, 1923) (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/301-350/325.jpg> (last visited Nov. 4, 2002) (on file with author). By the time Howe announced his proposal to his colleagues in ophthalmology, he had increased the amount of the required bond to \$14,000. Lucien Howe, *Concerning a Law to Lessen Hereditary Blindness*, TRANSACTIONS AM. OPHTHALMOLOGICAL SOC’Y (June 25, 1926) (on file with the American Philosophical Society), available at <http://www.eugenicsarchive.org/images/eugenics/normal/301-350/308.jpg> (last visited Nov. 4, 2002) (on file with author).

103. See *Legal, Legislative and Administrative Aspects of Sterilization*, EUGENICS RECORD OFFICE BULLETIN NO. 10B, at 117-20 (1914) (Model Sterilization Law).

104. *Memorandum on Marriage License Bond*, *supra* note 98.

105. HARRY LAUGHLIN, *EUGENICAL STERILIZATION IN THE UNITED STATES* (1922).

106. Sam Smith, *Harvard Scientist Wants Married Couples Bonded*, B. SUNDAY POST, June 10, 1928. Bonding was later proposed as a substitute for sterilization. See J.H. LANDMAN, *HUMAN STERILIZATION* 274 (1932).

107. *Nearsightedness Could Be Wiped Out by Eugenics*, 1942 SCI. NEWS LETTER 387, 387.

a mere “pseudo-science,” a term often used today to describe eugenics by those who wish to distinguish it from current scientific orthodoxy.<sup>108</sup> Such a posture ignores the extraordinary attention and enormous support of mainstream scientists given to the eugenics movement early in the century. At the height of the eugenics movement, no major college or university in the United States ignored eugenics.<sup>109</sup> In fact, the eugenicists themselves used the term “pseudo-science” to distance themselves from past missteps, such as phrenology.<sup>110</sup>

Despite the dark turns taken by some eugenicists—favoring crude legal interventions to eliminate “defective” conditions—much of the language of eugenics was hopeful. It pointed to a time when scientific insights could lead to preventive medicine. Though their perspectives were often marked with prejudice, a clearly philanthropic motive was also often at work in those who endorsed the health policy initiatives of the eugenics movement. That is one feature of early eugenics that made it extraordinarily popular.

#### IV. POPULARITY OF THE EUGENICS MOVEMENT

Francis Galton, the man who coined the term “eugenics” defined it as “hereditarily endowed with noble qualities” or more simply “well-born.”<sup>111</sup> Galton’s elaborated definition included “all influences that tend in however remote a degree to give the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have had.”<sup>112</sup> Within a generation, adherents to Galton’s scientific credo would include statesmen<sup>113</sup>

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108. Daniel Wikler, *Eugenic Values*, 11 SCI. CONTEXT 455, 455 (1998) (“[E]ugenic[s] programs are now generally regarded as pseudoscience, having roughly the same relation to genetics as alchemy to chemistry or astrology to astronomy.”).

109. HALLER, *supra* note 90, at 72 (“Nearly every college and university had one or more professors inspired by the new creed.”).

110. Harry Laughlin noted that many fields of study, such as anatomy, psychology and phrenology were drawn upon to constitute eugenics. Of phrenology he said, “Although this pseudo-science failed in its extravagant claims of correlation, it must be credited with a careful study of human characteristics.” Harry H. Laughlin, EUGENICS RECORD OFFICE REP. NO. 1, at 5 (1913); *see also Pseudo-Science*, 12 J. HEREDITY 431 (1921) (book review) (using “Pseudo-Science” as a headline for a negative review of a book characterized as “feminist’ literature.”).

111. FRANCIS GALTON, INQUIRIES INTO HUMAN FACULTY AND ITS DEVELOPMENT 17 (1883).

112. *Id.*

113. *See, e.g.*, PROBLEMS IN EUGENICS: PAPERS COMMUNICATED TO THE FIRST INTERNATIONAL EUGENICS CONGRESS xi (1912) (showing “The Right Hon. Winston Churchill, M.P., First Lord of the Admiralty,” listed as a Vice President of the Eugenics Congress); *see also Lombardo, supra* note 85, at 801 n.385 (describing Elihu Root’s career as Secretary of War, Secretary of State and Senator of New York, as well as his connections to the eugenics movement).

and Presidents,<sup>114</sup> as well as a Who's Who of scientists and physicians who eventually embraced eugenics.<sup>115</sup> Nobel Laureates, such as Theodore Roosevelt<sup>116</sup> (1906), Elihu Root (1912), Woodrow Wilson (1919) and Winston Churchill (1953), joined more than a dozen Nobel Prize winners from the sciences who openly supported some form of eugenics at one time during their careers. They included such noteworthy scientists and social scientists as Alexis Carrel (1912),<sup>117</sup> Thomas Hunt Morgan (1933),<sup>118</sup> Jane Addams (1931),<sup>119</sup> H.J. Muller (1946),<sup>120</sup> William Shockley (1956),<sup>121</sup> Linus Pauling (1962),<sup>122</sup> Joshua Lederberg (1958),<sup>123</sup> Francis Crick (1962),<sup>124</sup> Konrad Lorenz (1973),<sup>125</sup>

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114. For example, as Governor of New Jersey, Woodrow Wilson signed sterilization legislation that would apply to "the hopelessly defective and criminal classes." See *Gov. Wilson Signs the Sterilization Bill*, N.Y. TRIB., May 4, 1911, at 1. Theodore Roosevelt wrote in reference to "the vital problem of the perpetuation of the best race elements . . . I wish very much that the wrong people could be prevented entirely from breeding." Theodore Roosevelt, *Twisted Eugenics*, 106 OUTLOOK 30, 32 (1914).

115. See Philip Reilly, *The Surgical Solution: The Writings of Activist Physicians in the Early Days of Eugenical Sterilization*, 26 PERSP. BIOLOGY & MED. 637 (1983).

116. See, e.g., Roosevelt, *supra* note 114.

117. Reggiani, *supra* note 39.

118. GARLAND E. ALLEN, THOMAS HUNT MORGAN: THE MAN AND HIS SCIENCE 227-34, 369 (1978).

119. JANE ADDAMS, A NEW CONSCIENCE AND AN ANCIENT EVIL 130-31 (1912).

120. H.J. Muller, *The Dominance of Economics over Eugenics*, in A DECADE OF PROGRESS IN EUGENICS: SCIENTIFIC PAPERS OF THE THIRD INTERNATIONAL CONGRESS OF EUGENICS 138-44 (Harry F. Perkins et al. eds., 1934).

121. ALLAN CHASE, THE LEGACY OF MALTHUS: THE SOCIAL COSTS OF THE NEW SCIENTIFIC RACISM 482 (1977).

122. Linus Pauling, *Foreword*, 15 UCLA L. REV. 267, 269 (1968).

123. Joshua Lederberg, *Molecular Biology, Eugenics and Euphenics*, 198 NATURE 428, 428-29 (1963). This incredibly prescient article foreshadows many of the newest developments in genetic research.

124. Sir Francis Crick has been quoted as saying "no newborn infant should be declared human until it has passed certain tests regarding its genetic endowment, and that if it fails these tests it forfeits the right to live." Charles Frankel, *The Specter of Eugenics*, 57 COMMENT. 25, 33 (1974). Crick also favored a scheme for licensing parenthood or a tax on children. Francis Crick, *Eugenics and Genetics*, in MAN AND HIS FUTURE 274, 275-76 (Gordon Wolstenholme ed., 1963). This would "encourage by financial means those people who are more socially desirable to have more children." *Id.* at 276. As for the problem with correlating financial means with "desirability," Crick said: "It is unreasonable to take money as an exact measure of social desirability, but at least they are fairly positively correlated." *Id.*

125. Lorenz used language typical of the old eugenics movement, comparing the social effect of genetic abnormalities to the career of an unchecked cancer:

There is a close analogy between a human body invaded by a cancer and a nation afflicted with subpopulations whose inborn defects cause them to become social liabilities. Just as in cancer the best treatment is to eradicate the parasitic growth as quickly as possible, the eugenic defense against the dysgenic social effects of afflicted subpopulations is of necessity limited to equally drastic measures . . . . When these inferior elements are not effectively eliminated from a [healthy] population, then—just as when the cells of a malignant tumor are allowed to proliferate throughout a human body—they destroy the host body as well as themselves.

CHASE, *supra* note 121, at 349.

and Gunnar Myrdal (1974).<sup>126</sup>

The popular face of eugenics was often a happy one, with the winners of “better babies” contests pledged to future “eugenic” marriages<sup>127</sup> and county fairs rewarded the fittest families.<sup>128</sup> Never too far behind a popular movement, even politicians jumped on the eugenics bandwagon. One Chicago politico is reported to have even invoked the new field on his own behalf, claiming a spot on the Chicago City Council as “[the] eugenic candidate.”<sup>129</sup>

Early critiques by Europeans of the scientific technique of leaders in American eugenics prompted a *New York Times* headline announcing an “English Attack on *Our* Eugenics.”<sup>130</sup> The debate continued in the pages of *Science*, which quoted an indignant Charles Davenport, the soon dean-to-be of American eugenics, condemning the “stupid, captious and misleading” comments and “delusions” of a European counterpart who dared to question the scientific bona fides of the U.S. movement<sup>131</sup> as it gathered public attention and approval.

Representatives of the government health establishment concurred in endorsing the validity of eugenics. The U.S. Public Health Service Surgeon General supervised eugenic examinations and issued eugenic marriage certificates.<sup>132</sup> Dr. W.C. Rucker, the assistant surgeon general, said “Eugenics is a science. It is a fact, not a fad.”<sup>133</sup> Social work leader and later Nobel Laureate Jane Addams applauded “the new science of eugenics with its recently appointed university professors. Its organized societies publish an ever-increasing mass of information as to that which constitutes the inheritance of well-born children.”<sup>134</sup> Even disability rights icon Helen Keller agreed that some “defective” children should not be saved from a premature

126. Nils Roll-Hansen, *Eugenics in Scandinavia After 1945: Change of Values and Growth in Knowledge*, 24 SCANDINAVIAN J. HIST. 199, 202 (1999).

127. *Perfect Babies to Mate for Good of the Race*, L.A. TIMES, Mar. 13, 1915, at A1.

128. STEVEN SELDEN, *INHERITING SHAME: THE STORY OF EUGENICS AND RACISM IN AMERICA* 22, 30-36 (1999).

129. MARTIN S. PERNICK, *THE BLACK STORK: EUGENICS AND THE DEATH OF “DEFECTIVE” BABIES IN AMERICAN MEDICINE AND MOTION PICTURES SINCE 1915*, at 54 (1996).

130. David Heron, *English Eugenics Expert Again Attacks Davenport*, N.Y. TIMES, Jan. 4, 1914, at 14, 15; David Heron, *English Expert Attacks American Eugenics*, N.Y. TIMES, Nov. 9, 1913, at 7 (emphasis added).

131. C.B. Davenport & A.J. Rosanoff, *Reply to the Criticism of Recent American Work by Dr. Heron of the Galton Laboratory*, EUGENICS RECORD OFFICE BULLETIN NO. 11, at 3, 3-43 (1914); see Charles B. Davenport, *A Reply to Dr. Heron’s Strictures*, 38 SCI. 773, 774 (1913); David Heron, *A Rejoinder to Dr. Davenport*, 39 SCI. 24, 24-25 (1914).

132. *See Gets Eugenic Certificate*, N.Y. TIMES, Oct. 22, 1913, at 1 (describing architect Homer B. Terrill as the recipient of the first eugenic certificate issued by the United States Public Health Service).

133. Dr. W.C. Rucker, *More “Eugenic Laws”: Four States Consider Sterilization Legislation and Nine Contemplate Restrictions on Marriage—None of Proposed Laws Satisfactory from Eugenic Viewpoint*, 6 J. HEREDITY 219 (1915).

134. ADDAMS, *supra* note 119, at 130-31.

death because of their propensity to criminality.<sup>135</sup>

The rush to endorse new ideas seemingly anchored in scientific truth was hardly unusual, and one should not make too much of the early popularity of disparate ideas labeled “eugenic.” However, the extraordinary success of proponents of some variety of eugenics in capturing the public’s moral imagination cannot be ignored. Despite the disfavor into which the “dark side” of eugenics has fallen, the seductive message of the eugenics movement is worthy of analysis. Early followers rallied to a fundamental eugenic premise: that science could be used to alleviate suffering and improve the human condition. The attraction to eugenics for many was that it promised, if not a medical Utopia, free of diseases, at least a future in which some debilitating conditions could be relegated to the dustbin of history.

Among the champions of this promise was the inventor of the telephone. Alexander Graham Bell asserted that the “chief object of eugenics” should consist in raising the general quality of health among the largest number of individuals.<sup>136</sup> Bell was among the most prominent of eugenics supporters, and his endorsement extended to his role as chairman of the first Scientific Board of Directors of the Eugenics Record Office (ERO).<sup>137</sup> Bell also served as chair of the ERO technical Committee on the Heredity of Deafmutism.<sup>138</sup> When the *Journal of Heredity* became the flagship publication of the American Genetic Association, he wrote the introductory article, entitled “How to Improve the Race,”<sup>139</sup> for the first edition.

Bell argued that it was most important not to prohibit marriage and childbirth among those with hereditary problems, but to encourage them to marry “normal” members of the population, thereby “dilut[ing]” the impact of “undesirable blood.”<sup>140</sup> He believed that “it is more practicable to improve the undesirable strains than to eradicate them.”<sup>141</sup> As early as 1914, he decried the trend among eugenic enthusiasts to concentrate on coercive legal measures in an effort to eliminate genetic disease.

[I]t is to be regretted that the efforts of eugenists have been mainly directed to the diminution of the undesirable class.

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135. PERNICK, *supra* note 129, at 55.

136. See Alexander Graham Bell, *How to Improve the Race*, 5 J. HEREDITY 1, 6 (1914).

137. See Laughlin, *supra* note 110, at 29.

138. *Eugenics Section: Its Organization*, 1 AM. BREEDERS’ MAG. 235, 236 (1910).

139. Bell, *supra* note 136, at 1. This edition represented a transition from an earlier publication named the *American Breeders’ Magazine*, which was published prior to 1914. The American Breeders Association was the earlier name of the American Genetics Association.

140. *Id.* at 7.

141. *Id.* (emphasis omitted).

So much has this been the case that the very word “eugenics” is suggestive to most minds of hereditary diseases and objectionable abnormalities; and of an attempt to interfere, by compulsory means, with the marriages of the defective and undesirable.<sup>142</sup>

While opposed to the most repressive measures (such as compulsory sterilization) that eugenicists would eventually champion, Bell proposed a resolution on behalf of the ERO Board in 1916 to require the names of parents of everyone counted in the 1920 Census.<sup>143</sup> He wished to require the inclusion of the name and address of “each blind or deaf and dumb person” in a registry so that eugenicists could monitor and track family records of “dependent” persons from generation to generation, making the census a source of pedigree data available for genetic and eugenic analysis.<sup>144</sup>

He also contributed to techniques in drawing pedigrees, proposing a system borrowed from his own study of multi-nippled sheep.<sup>145</sup> His mathematical technique represented a foolproof means of detecting, and thereby avoiding, consanguineous pairings that could lead to a genetic mismatch.<sup>146</sup> Bell’s obituary in the *Journal of Heredity* celebrated his perspective—eugenics with a friendly face.

His first study [of deafness] has put him in the rank of earliest explorers in the field of eugenics, and his later work [on longevity] has marked him as belonging to the positive eugenists who believe that the improvement of the human race will only come from the mating of the desirables and that to stop the mating of the undesirables will not advance the race . . .<sup>147</sup>

Bell was joined on the Scientific Board of the ERO by William Welch. Welch was the first dean of the School of Medicine at Johns Hopkins University, and a giant in the development of public health policy.<sup>148</sup> He has been called the “Dean of American Medicine” and father of American medical education.<sup>149</sup> Thomas Hunt Morgan, student of the common fruit fly *drosophila* and later winner of the 1933 Nobel Prize for his work in genetics, joined the other scientists on the

142. *Id.* at 6.

143. See Harry H. Laughlin, *Population Schedule for the Census of 1920*, 10 J. HEREDITY 208, 208 (1919).

144. *Id.* at 208-09.

145. In addition to inventing the telephone, Bell studied the genetics of sheep with extra udders. Alexander Graham Bell, *Sheep-Breeding Experiments on Beinn Bhreagh*, 36 SCI. 378, 378-84 (1912). Bell also sought to understand the genetic basis for deafness. David Fairchild, *Alexander Graham Bell: Some Characters of His Greatness*, 13 J. HEREDITY 195, 195-98 (1922).

146. See Alexander Graham Bell, *A Simple System of Designating Relationships*, 12 J. HEREDITY 210 (1921).

147. Fairchild, *supra* note 145, at 198.

148. See generally SIMON & JAMES THOMAS FLEXNER, WILLIAM HENRY WELCH AND THE HEROIC AGE OF AMERICAN MEDICINE 5 (John’s Hopkins Univ. Press 1941).

149. See generally *id.*



original ERO Board.<sup>150</sup> The presence of Bell, Welch, and Morgan on the ERO Board shows the affinity of pioneers in genetics for practical applications of their science. Even Wilhelm Johannsen, the Danish scientist who coined the terms “gene,” “genotype,” and “phenotype,” was active in the eugenics movement.<sup>151</sup> The perspective of Bell, who shied away from “negative eugenics,” and Morgan, whose dissatisfaction with the shoddy science of many eugenicists lead him to an early break with the movement,<sup>152</sup> can be contrasted with the attitudes of Davenport and Laughlin. Nevertheless, *all* these men were intimately involved in the early eugenics movement, and none would have completely discarded the hopeful premises upon which the movement was founded.

Those premises and the philanthropic goals to which they pointed were expressed in organizations like the American Association for the Study and Prevention of Infant Mortality (AASPIM). Every annual meeting of the AASPIM included a program on eugenics,<sup>153</sup> and the organization was able to extend its influence by extensive publicity.<sup>154</sup> The ambivalence of a brand of eugenics that was simultaneously sympathetic to the disabled and intent on eradicating disabilities is captured in the comments of AASPIM Chairman Harvey Earnest Jordan. Jordan was a faculty member at the University of Virginia School of Medicine for over forty years, and eventually led that school as Dean. He supported the proposition that every child “must be saved if possible” while those “grossly and obviously unfit” should be prevented from reproducing.<sup>155</sup> However, in contrast to Davenport, who referred to “the beneficent agent of extensive infant mortality”

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150. See ALLEN, *supra* note 118, at 228, 234, 369.

151. A strong critic of many early scientific missteps of eugenicists, Johannsen nevertheless joined the Permanent International Commission on Eugenics in 1923 and even served on a Danish state commission on castration and sterilization. See EUGENICS AND THE WELFARE STATE: STERILIZATION POLICY IN DENMARK, SWEDEN, NORWAY AND FINLAND 26 (Gunnar Broberg & Nils Roll-Hansen eds., 1996).

152. Allen, *supra* note 69, at 250.

153. RICHARD A. MECKEL, SAVE THE BABIES: AMERICAN PUBLIC HEALTH REFORM AND THE PREVENTION OF INFANT MORTALITY 1850-1929, at 116 (1990).

154. See, e.g., *Plan Nation-Wide Eugenics Society*, N.Y. TIMES, Nov. 16, 1913, at 15 (quoting Harvey E. Jordan during the AASPIM 1913 organizational meeting in Washington, D.C.).

155. *Id.*; see also Gregory Michael Dorr, *Assuring America's Place in the Sun: Ivey Foreman Lewis and the Teaching of Eugenics at the University of Virginia, 1915-1953*, 66 J.S. HIST. 257, 264 (2000). Among Jordan's eugenical publications were: Harvey Ernest Jordan, *Eugenics: Its Data, Scope and Promise, as Seen by the Anatomist*, in EUGENICS: TWELVE UNIVERSITY LECTURES 107 (1914); H.E. Jordan, *The Place of Eugenics in the Medical Curriculum*, in PROBLEMS IN EUGENICS: PAPERS COMMUNICATED TO THE FIRST INTERNATIONAL EUGENICS CONGRESS 396 (1912) [hereinafter Jordan, *Medical Curriculum*]; H.E. Jordan, *Heredity as a Factor in the Improvement of Social Conditions*, 2 AM. BREEDERS' MAG. 246 (1911); H.E. Jordan, *The Eugenical Aspect of Venereal Disease*, 3 TRANSACTIONS AM. ASS'N FOR STUDY & PREVENTION INFANT MORTALITY 156 (1912-1913).

as a check on problem births,<sup>156</sup> Jordan opposed “eugenic euthanasia.”<sup>157</sup>

To enable doctors to understand the importance of the workings of heredity in daily practice, Jordan argued that eugenics should be part of the curriculum of every medical school.<sup>158</sup> The doctor of the future would not be merely a “dispenser of medicines” but a eugenic advisor who could point the way toward the “elimination of as much of the physical, mental and moral sickness and weakness as can be prevented.”<sup>159</sup> Jordan urged that health enhancing practices must be promoted toward an “ultimate ideal” of a “perfect society constituted of perfect individuals.”<sup>160</sup> But because Jordan was aware of the expense of “social therapy” and environmental interventions to cure problems thought traceable to heredity, he favored a preventive strategy.<sup>161</sup>

Eugenics provided the means to realize his prophylactic goal. “Medicine is fast becoming a science of the prevention of weakness and morbidity; their permanent not temporary cure, their racial eradication rather than their personal palliation . . . Eugenics, embracing genetics, is thus one of the important disciplines among the future medical sciences.”<sup>162</sup>

#### V. CONCLUSION: THREE GENERATIONS OF ??? ARE ENOUGH?

Historians of eugenics have demonstrated the variety of ways early geneticists were involved in eugenics. They have noted the difficulty of framing accurate generalizations about the eugenics movement, because it included people who represented an “enormous variety of ideas, researches, and viewpoints.”<sup>163</sup> Nevertheless, one vari-

156. Davenport’s comments were reported from another meeting of the American Association for the Study and Prevention of Infant Mortality. See Erville B. Woods, *Heredity and Opportunity*, 26 AM. J. SOC. 1, 18 (1920).

157. E.g., Jordan, *Eugenics: Its Data, Scope and Promise, as Seen by the Anatomist*, *supra* note 155.

158. Jordan, *Medical Curriculum*, *supra* note 155.

159. *Id.* at 398.

160. *Id.* at 396.

161. *Id.*

162. Jordan, *Medical Curriculum*, *supra* note 155, at 396; H.E. Jordan, *Eugenics: The Rearing of the Human Thoroughbred*, 11 CLEV. MED. J. 875 (1912). Davenport made similar comments on the need to infuse the medical curriculum with eugenics. Charles B. Davenport, *Eugenics and the Physician*, 95 N.Y. MED. J. 1195 (1912). For other parts of the Jordan eugenics career, see Gregory Michael Dorr, *Segregation’s Science: The American Eugenics Movement and Virginia, 1900-1980* at 136-190 (2000) (Unpublished Ph.D. dissertation, University of Virginia) (on file with author). Jordan’s textbook on histology had a section on eugenics through six editions, last printed in 1940. *Id.*

163. THE WELLBORN SCIENCE: EUGENICS IN GERMANY, FRANCE, BRAZIL AND RUSSIA 221 (Mark Adams ed., 1990). In a similar vein, Paul Weindling emphasizes the “competing and evolving varieties of eugenics.” Paul Weindling, *The Survival of Eugenics in 20th-Century Germany*, 52 AM. J. HUM. GENETICS 643, 643 (1993).

ety of the old eugenics looked forward to its application as part of a revolution in medicine. The similarities between the rhetoric used by eugenicists and parallel rhetoric today describing such a revolution is obvious.<sup>164</sup> Perhaps it is true that “[o]nce we have left the garden of genetic innocence, some form of eugenics is inescapable.”<sup>165</sup> But, what form of eugenics is acceptable?

The eugenics of Davenport, Laughlin, Howe, or Hitler are clearly not acceptable. Their example is often chosen to show the danger of allowing the intrusive hand of government into the reproductive choices of individuals. Consistent with that critique, some emphasize that government is the villain we should attend to most, since it can do so much more harm than mere individuals ever could.<sup>166</sup> Some bioethicists make a similar point, arguing that the worst feature of eugenics was its application through government coercion, not the choices made against allowing certain conditions or characteristics to be reproduced in a new generation.<sup>167</sup>

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164. Compare Harvey Jordan’s celebration of the power of eugenics, Jordan, *Eugenics: The Rearing of the Human Thoroughbred*, *supra* note 162, to this comment from a recent medical genetics textbook:

[A] major contribution of these new developments in genetics has been in the area of prevention and/or avoidance of disease, the aspect of medicine that must become the focus of modern medicine. Genetic screening programs to detect individuals at risk, improved genetic diagnosis, genetic counseling, and prenatal diagnosis are some of these current applications of new genetic knowledge to medical practice. . . .

THOMAS D. GELEHRTER ET AL., *PRINCIPLES OF MEDICAL GENETICS* 1 (2d ed. 1998) (emphasis omitted).

165. PHILIP KITCHER, *THE LIVES TO COME: THE GENETIC REVOLUTION AND HUMAN POSSIBILITIES* 204 (1996).

166. Ruth Schwartz Cowan, *Genetic Technology and Reproductive Choice: An Ethics for Autonomy*, in *THE CODE OF CODES: SCIENTIFIC AND SOCIAL ISSUES IN THE HUMAN GENOME PROJECT* 244, 262-63 (Kevles & Hood eds., 1992). Ruth Schwartz Cowan clarifies the danger of attacking eugenics by rolling back the clock on patient autonomy:

The history of prenatal diagnosis thus seems to suggest that in order to prevent a future in which parents will be able to choose the characteristics of fetuses that will be brought to term we will have to alter the norms of the scientific profession, and return medical practice to paternalistic modes of operation, *and* restrict women’s rights to request and obtain abortions.

*Id.* at 261.

167. For example, Art Caplan notes that “no moral principle seems to provide sufficient reason to condemn individual eugenic goals.” Arthur L. Caplan et al., *What is Immoral About Eugenics?*, 319 *BRIT. MED. J.* 1, 2 (1999). He considers futuristic choices such as eye color or a genetically engineered propensity for mathematics similar to today’s decisions to teach one’s children a different set of religious values or send them to summer camp for tennis lessons. *Id.* Caplan goes on to say that if

coercion and force are absent and individual choice is allowed to hold sway, then presuming fairness in the access to the means of enhancing our offsprings’ lives it is hard to see what exactly is wrong with parents choosing to use genetic knowledge to improve the health and wellbeing of their offspring.

*Id.* To a certain extent, Caplan’s arguments about distributive justice echo what Buchanan et al. identify as the “greatest . . . flaw of eugenics”—the “failure to take justice seriously.” ALLEN BUCHANAN ET AL., *FROM CHANCE TO CHOICE: GENETICS AND JUSTICE* 100 (2000).

Thus laws mandating sterilization or prohibiting marriage among people of differing “races” represented the most egregious examples of government intrusion in the name of eugenics, and governmental involvement in coercive reproductive policies is the most objectionable feature of eugenics to most people today. If no eugenic laws had been enacted in the United States or Europe, we would have little reason to bemoan the “curse of eugenics”<sup>168</sup> that plagues current genetic research.

Eugenic laws found their most dramatic expression in the case of *Buck v. Bell*;<sup>169</sup> it is used as a symbol for our rejection of eugenics. The popular memory of the case is linked to the opinion of Oliver Wendell Holmes, Jr. condemning Carrie Buck to sterilization as the daughter of a “socially inadequate” mother and a mother herself of a similarly afflicted daughter.<sup>170</sup> The opinion concludes with a splash of the trademark Holmesian rhetoric, criticized by his colleagues as a bit too caustic,<sup>171</sup> condemned by history as a chilling expression of statist sentiment.

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. 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. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes . . . . Three generations of imbeciles are enough.<sup>172</sup>

Most people cringe at the Holmes opinion as an example of the worst tendencies of the eugenics movement. As often as not, their discomfort is exacerbated by the knowledge that the *Buck* case was a sham.<sup>173</sup> *Buck* is certainly among the most cruel Supreme Court opinions, and as we now know, among the most false. Carrie Buck had no

168. Paul Gray, *Cursed by Eugenics*, TIME, Jan. 11, 1999, at 84.

169. 274 U.S. 200 (1927).

170. *Id.* at 207.

171. See generally 2 HOLMES-LASKI LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND HAROLD J. LASKI 1916-1935, at 937-38 (Mark DeWolfe Howe ed., 1953) [hereinafter LETTERS]. Holmes’s eugenic sentiments to Laski were common, see, for example, Holmes’s letter to Laski, stating “As I have said, no doubt, often, it seems to me that all society rests on the death of men. If you don’t kill ‘em one way you kill ‘em another—or prevent their being born.” 1 LETTERS, *supra*, at 432 (letter dated June 14, 1922). For a general critique of Holmes’ rhetoric, see ALBERT W. ALSCHULER, LAW WITHOUT VALUES: THE LIFE, WORK, AND LEGACY OF JUSTICE HOLMES (2000).

172. *Buck*, 274 U.S. at 207.

173. See, e.g., Lombardo, *supra* note 16.

diagnosable cognitive disabilities, nor did her daughter.<sup>174</sup> She was the victim of a political movement that had the assistance of her foster parents, her doctors, and her lawyer; she was betrayed by each of them in turn.<sup>175</sup> Perhaps this makes the case all the more tragic; often it simply makes our moral judgments about it too easy.

Because the Supreme Court got it wrong—to use Holmes' language, Carrie was no "imbecile," and no sound evidence of hereditary disease was demonstrated in her case—it is easy to generate scorn for the case and the movement it represented.<sup>176</sup> But a moralistic, backward judgment about eugenics is not only naively ahistorical, it can be dangerous. To impute only corrupted motives to supporters of the eugenic agenda because of our disgust at the worst of those who claimed the label means to miss the myriad ways other motives guided their efforts, as well as the many ways our current practices and motives parallel them. It also may imply that had Holmes' commentary been accurate, and if Carrie Buck actually was likely to pass on a genetically diagnosed disabling condition, we would endorse the Holmes conclusion and the type of law it affirmed as well.

What if we remove the specter of a governmentally mandated reproductive scheme? As the discussion above has made clear, many of those who happily embraced the banner of eugenics were also loathe to enact sterilization laws or other governmental programs but nevertheless endorsed the goals of eugenics in decreasing genetically transmitted disease.<sup>177</sup> How different were their aspirations from those played out today in practices such as prenatal or preimplantation diagnosis and consequent abortion?

Today we can diagnose some forms of deafness, blindness, and numerous other diseases where the genetic contribution to disease is clear and the prognosis of genetic disease is firm. How much does it matter if we use a technique—less troubling to some than coercive surgery—to "cleanse the germplasm" as the eugenicists would have said? Does our embrace of techniques such as preimplantation selection of "normal" fetuses or prenatal genetic diagnosis and selective abortion make our motives in "eradicating defects" less suspect? Does homegrown retail eugenics differ in kind from the wholesale government variety?

When we recall Howe's attempt to eradicate blindness, we must also evaluate current efforts to search for genes that lead to impaired

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174. *Id.*

175. *Id.*

176. *Id.*

177. See, e.g., John P. Dawson, 27 ILL. L. REV. 839, 842 (1932) (reviewing J.H. LANDMAN, HUMAN STERILIZATION (1932)) ("[T]he eugenic movement will make greater headway by throwing its emphasis on private rather than public agencies, on persuasion rather than compulsion.").

sight.<sup>178</sup> Our memory of Alexander Graham Bell's crusade to eliminate deafness must be placed alongside reflections on similar projects today.<sup>179</sup> The search for the causes of mental retardation and developmental delay has not abated since the time of Davenport and Laughlin, and genetic markers for these cognitive impairments are currently under study.<sup>180</sup> A review of Jordan's attempt to inject eugenics into medical education "as part of genetics" to lower the social cost of disease,<sup>181</sup> reminds us that neither our motives nor some of our methods are dissimilar to our predecessors.<sup>182</sup> In order to take eugenics seriously, we cannot dismiss Holmes or any other advocates of eugenics as backward, benighted members of a deluded, defunct, social movement. We have too much in common with them for that tactic to be pursued in good faith. We must strip the Holmes opinion of the language that we may find offensive, then answer the hard question that remains. What genetic conditions shall we choose to eliminate? Three generations of ??? are enough?

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178. See, e.g., Jamel Chelly & Jean-Louis Mandel, *Monogenic Causes of X-Linked Mental Retardation*, 2 NATURE REV. GENETICS 669, 680 (2001).

179. See, e.g., P.M. Kelley et al., *Novel Mutations in the Connexin 26 Gene (GJB2) That Cause Autosomal Recessive (DFNB1) Hearing Loss*, 62 AM. J. HUM. GENETICS 792 (1998).

180. See, e.g., Siobhán A. Jordan et al., *Localization of an Autosomal Dominant Retinitis Pigmentosa Gene to Chromosome 7q*, 4 NATURE GENETICS 54 (1993).

181. Compare *id.*, with Francis S. Collins & Alan E. Guttmacher, *Genetics Moves into the Medical Mainstream*, 286 JAMA 2322, 2323 (2001) ("[G]enetic medicine will ultimately improve prevention initiatives, leading to greater emphasis on maintaining wellness and a reduction in health care costs over the longer term.").

182. A recent article on preimplantation diagnosis for Alzheimer's disease included this recommendation: "prospective parents . . . should be informed about this emerging technology so they can make a choice about reproduction." Yury Verlinsky et al., *Preimplantation Diagnosis for Early-Onset Alzheimer Disease Caused by V717L Mutation*, 287 JAMA 1018, 1021 (2002). Similar recommendations were made for other parents who may be "determined by strong genetic predisposition to be at risk for producing progeny with severe disorders." *Id.*