BOOK REVIEW

Human Sterilization. By L. H. Landman. New York: The Macmillan Company (1932), pp. xv, 341.

In the famous case of *Buck v. Bell,* 274 U. S. 200, the sterilization law of the state of Virginia was upheld as constitutional. Mr. Justice Holmes writing the opinion for the majority of the Court remarked in his caustic way: "Three generations of imbeciles are enough." Whether the learned jurist would have held under different circumstances that two such generations would have been insufficient or that four of them would have more than enough is a matter for conjecture. The author of this work makes no attempt to tell his reader which generation of mental defectives should be sterilized. He does attempt to set forth some of the problems. Once or twice he unenthusiastically recommends certain procedures. The book is for the most part documentary, strictly impersonal and full of highly interesting facts. It is far from complete but it gives a comprehensive outline of the subject.

The book deals with the need of sterilization, surveys the present state of the law and then confronts the general problems arising from its application. It is fairly certain from a perusal of the work that sterilization in some cases would benefit society by ridding it of future social undesirables. As mental defectives breed more children than ordinary human beings and their progeny in most cases must be institutionalized, sterilization of prospective parents would lighten the material burden of organized society and reduce the number of such children. There are different kinds of defectives, however, and they possess characteristics some of which are inherited and others acquired. Then again certain mental defectives are harmless and capable to provide for themselves to some extent. Many other problems of difference and degree arise.

The author deals not only with the legal aspects; he sets forth, also, the scientific and medical aspects of the subject. Sterilization does not render the male or female sexually powerless. The operation, vasectomy on a male and salpingectomy on a female, renders the person sexually sterile but does not destroy the power to have intercourse. The operation is generally harmless and has no other ill effects. The health of the patient is not impaired and generally the patient is the same as before except for his ability to breed. Once sterilization has been effected there is very little hope that a subsequent operation can restore the fertility of a person. Rejuvenation, by surgical measures, has been attempted with very little success. It is fairly certain that as medical science now stands sterilization is practically a final step.

The number of mental incompetents in this country undoubtedly runs into millions. They represent a financial loss to society that is considerable and they also present a danger that must be guarded closely. Many of these mental defectives transmit inheritable characteristics thus perpetuating their kind. The author sets forth detailed statistics. It is interesting to note that the male is more prone to insanity than the female. The female, however, generally remains insane longer than the male. At this point a slight inconsistency arises for the author shows that more women are discharged from institutions than men. Again, the charts show that the foreign-born are more subject to mental defects than natives. In computing the percentages of the mental defective in each race the author makes the mistake of taking the total number of foreign-born defectives as his base rather than the relative population of each group. These mistakes are minor ones and prove only that figures sometimes mean very little.

Massachusetts has no sterilization law. Thirty states have enacted, however, at one time or another human sterilization legislation. Indiana attempted it first and was followed within a few years by Washington, California and Connecticut. Up to January 1, 1932, 12,145 operations were performed under the sterilization laws of twenty-two States.

The leading case upholding the constitutionality of a sterilization law was *Buck* v. *Bell,* supra. That decision involved the constitutionality of the Virginia law. A later case. *Davis, Warden* v. *Walton,* (1929) 276 Pac. 921, upheld the sterilization law of the State of Utah although denying its application to Walton on the ground that his characteristics were acquired and not inherited. In 1931 the highest Court of Idaho upheld the constitutionality of the sterilization law of that State, deciding in the

case of *Board of Eugenics* v. *Troutman* (1931) 299 Pac. 668, that the defendant was subject to the law. Albert Troutman was charged with hereditary feeblemindedness and this charge was established to the Court's satisfaction. These three cases form the present nucleus of sterilization law. The limited number of decisions has prevented distinctions from being made other than a differentiation between inherited and acquired characteristics. In time there will be many more distinctions and we will undoubtedly have the anomaly of a mental trait being medically but not legally inheritable, just as now under McNaughten's rule we have a medical insanity which is not a legal insanity.

The great danger in these cases lies in the administration of the law. It is all very well to say that mental defectives should be sterilized but who is going to say which mental incompetent shall be subject to the law. The author recommends that a state board of eugenics and euthenics be established, presided over by a capable eugenecist and an experienced sociologist. This board after discovering potential parents of socially inadequate people should institute proceedings in the local courts and present such evidence to a judge or jury that will convince them that sterilization is needed. This practice if faithfully adhered to would have medical and legal safeguards. The patients before legal proceedings are instituted must be pronounced mentally defective according to medical formulae. Other methods will be advanced all of them subject to natural human abuses. In any event the entire affair should be handled with caution and only after extensive study. The law unlike science cannot experiment with guinea pigs but must confine itself to humans.

SIDNEY S. GRANT.

Interstate transmission of electric power. A study in the conflict of State and Federal jurisdictions. By Hugh Langdon Elsbree. Harvard University Press—(1931).

This extremely valuable study of the constitutional and administrative problems arising out of interstate transmission of electric power reminds us at once of Gulliver in his travels. The giant is tied hand and foot by a mass of puny, inconsequential threads, and his progress is arrested while Lilliputian wise men debate. The interstate transmission of electric power is interstate commerce. States cannot directly interfere with it therefore. The several problems growing out of this doctrine are helpfully discussed and analyzed by Professor Elsbree, but, alas, no amount of discussion or analysis can give the answers to the pertinent questions that will guide those who would undertake to develop interstate transmission of power. Some of these questions that cannot be answered with authority are:—can a state absolutely prevent the transmission of electric energy from within its borders? The Maine law prohibits the exportation from the state of hydro-electric power except with the express authority of the legislature. It is familiar recent history that a very determined effort was recently made in that state to change this law, without success. Other states accomplish similar results through conditions imposed upon hydro-electric companies by the Commission or administrative board having power of regulation. Whether such prohibitions and/or conditions precedent are constitutional is a debated question. On the question of power to regulate rates, the United States Supreme Court in the Attleboro case, decided in 1927, that a contract by a Rhode Island company to deliver energy to a Massachusetts company at the State line is a wholesale transaction in interstate commerce and that the Rhode Island Commission has no jurisdiction over the rate established in the contract. In the Pennsylvania Gas Company case decided in 1924 the same Court held that where a Pennsylvania Gas Company was supplying gas to consumers in Jamestown, New York, the New York Commission had jurisdiction to order a reduction of the rate at which such gas retailed in New York. There is no authority for saying that Congress has a right to regulate interstate wholesale contracts such as came before the court in the Attleboro case, although it is assumed by most students of the subject with whom Professor Elsbree seems to agree that such is the case. Paul S. Andrews, special counsel for New York in the hearings in Congress in 1930 on the reorganization of the Federal Power Commission, argued, however, that Congress has no jurisdiction over this interstate wholesale contract, if so such transactions are removed entirely from any regulation.

The rate regulation problem is, of course, further complicated by the Holding Company. The theories upon which this angle of the problem must be settled are fully discussed by Professor Elsbree.