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Author(s): Sharon M. Leon

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“A Human Being, and Not a Mere Social Factor”: Catholic Strategies for Dealing with Sterilization Statutes in the 1920s

SHARON M. LEON

In the wake of the 1927 landmark Supreme Court decision in the *Buck v. Bell* case, which affirmed the constitutionality of laws authorizing the compulsory sterilization of so-called “feeble-minded” residents of state institutions, moral theologian and priest John A. Ryan took up his pen to address the issue of sterilization from a Catholics perspective. In the resulting pamphlet, *Human Sterilization*, Ryan argued that eugenic sterilization measures were not only unscientific and bad social policy, but that the *Buck* decision in its articulation of civil rights represented a clear departure from the understanding of natural rights in Catholic moral teaching.¹ The production of this text was the first piece of literature published by the National Catholic Welfare Conference that attempted to mobilize Catholic citizens throughout the United States in active opposition to eugenic sterilization laws as they came before the state legislatures.

Concerted political action by the laity and the clergy, both as individuals and as members of organized Catholic groups, was especially important after *Buck* because the decision marked a significant turning point for the cause of eugenics in the U.S. Just as eugenicist Harry H. Laughlin exclaimed that the decision marked the “end of the experimental period” for those in favor of eugenic sterilization laws, so too did it mark the end of an experimental period of sorts for Catholics who were determined to use the mechanisms of the U.S. political system effectively to thwart such laws.² The increased and significantly more organized efforts of members of the hierarchy and

1. John A. Ryan, *Human Sterilization* (Washington, D.C.: National Catholic Welfare Conference, 1927), foreword, 5. A copy is located in the National Catholic Welfare Conference Papers (henceforth NCWC Papers), (Collection 10) housed in the Archives of the Catholic University of America (henceforth ACUA).
2. Harry H. Laughlin, *The Legal Status of Eugenic Sterilization* (Chicago: Eugenics Associate of the Psychopathic Laboratory of the Municipal Court of Chicago, 1929), 7.

Sharon M. Leon is a doctoral candidate in American Studies at the University of Minnesota, Twin Cities.

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lay activists to defeat sterilization legislation in the state houses in the years between the *Buck* decision and Pope Pius XI's 1930 condemnation of eugenic sterilization built on the lessons learned during encounters earlier in the 1920s. In those early years of opposition, Catholic theologians and social activists struggled to negotiate the complexities and demands of the pluralist political climate in the United States.

Though an awareness of the conflict between Catholic activists' understanding of natural rights and the worldviews that undergirded eugenics policy initiatives informed Catholic activism, it did not comprise the centerpiece of the political strategy that they used to sway the state legislatures. Rather, this article argues that while fighting for a position that was supported by their moral tradition, Catholic activists worked within the social and political context of religious pluralism in the United States. Thus, they created a multifaceted argument against eugenic sterilization that would appeal to non-Catholics by emphasizing scientific objections to the procedure, legal questions about appeal and due process, and, finally, social justice issues raised by economic and racial status of the targeted populations. Then, Catholic activists and social thinkers produced a set of materials to educate their co-religionists about the moral teachings involved with eugenic sterilization. This strategy of political activism and education, fashioned in the late 1920s, resulted in the fact that eugenicists faced opposition from U.S. Catholics in their efforts to implement sterilization legislation well into the 1940s.

I. FOUNDATIONAL DISCUSSIONS

On April 9, 1907 the Governor of Indiana signed the nation's first eugenic sterilization law. The law marked the beginning of a slowly rising tide of similar legislation that called for the compulsory sterilization of criminals and the mentally defective whose conditions were determined by a board of advisors to be untreatable by other means. In the decade after the signing of the Indiana bill, twelve other states enacted sterilization legislation. Despite this legislative activity, the laws were seldom put to use, and between 1913 and 1918 seven of the laws were successfully challenged on constitutional grounds.³ By 1927, twenty-three state legislatures had enacted sterilization statutes,

3. Philip R. Reilly, *The Surgical Solution: A History of Involuntary Sterilization in the United States* (Baltimore, Md.: The Johns Hopkins University Press, 1991), 33, 39–40.

primarily concentrated in the upper Midwest and the Northwest, with a number in New England and the Mid-Atlantic.⁴

Developing both out of the social purity movements of the late nineteenth century and the social reform movements of Progressivism, the eugenics movement in the United States experienced widespread popularity during the first half of the twentieth century. Drawing on the work of British scientist, Sir Francis Galton, biologists Charles Davenport and Harry Laughlin came to be the two most prominent eugenics promoters in the U.S. In the period before 1920, the eugenics movement consisted of a variety of local clubs and organizations that drew on the work produced by Davenport and Laughlin at the Eugenics Records Office in Cold Spring Harbor, Long Island. While eugenics was experiencing global popularity, the movement in the United States was the most active and the most well funded, with foundational support from the Carnegie Institute and the Rockefeller Foundation. On the local level, the movement found followers in both radicals and conservatives, and experienced significant support from women's organizations.⁵

In the fall of 1921 at the Second International Congress of Eugenics, upon the suggestion of Scandinavian eugenicist, Jon Alfred Mjoen, Yale economist, Irving Fisher called for the formation of a national eugenics organization for the United States. His resolution launched the development of what would eventually become the American Eugenics Society. Dedicated to the research, education, and the promotion of the eugenics movement, the AES core leadership consisted of individuals such as Davenport and Laughlin, but also Henry Fairfield Osborn, Director of the American Museum of Natural History, and Madison Grant, nativist advocate of immigration restriction and antiscegenation laws. By 1930 the AES had attracted over 1,200 members and had promoted a legislative agenda that eugenics supporters in other nations envied.⁶

4. Laughlin, *The Legal Status of Eugenic Sterilization*, 57–59. In 1927, the list of states with valid laws included California, Colorado, Connecticut, Delaware, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Oregon, South Dakota, Utah, Virginia, Washington, and Wisconsin. The southern states were late to warm to the idea of eugenic sterilization legislation. Though laws were considered in Louisiana during the mid 1920s, other southern states debated the matter through the 1930s and well into the 1940s. See Edward J. Larson, *Sex, Race, and Science: Eugenics in the Deep South* (Baltimore, Md.: Johns Hopkins University Press, 1995).
5. Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (Cambridge, Mass.: Harvard University Press, 1995), 1–19, 41–56, 64–65.
6. Barry Mehler, "A History of the American Eugenics Society" (Ph.D. diss., University of Illinois, 1988), 36–80.

Sterilization statutes, as they were written in the 1920s, focused on the amorphous condition of “feeble-mindedness.” From the late nineteenth century until the 1940s, the term “feeble-minded” was used to refer to persons who exhibited a range of signs of reduced mental capacity. Often associated with poverty, crime, illegitimacy, alcoholism, and a whole host of other “deviant” behaviors, “feeble-mindedness” came to represent a catchall term for individuals who failed to live up to standards of behavior that were acceptable to Anglo-Protestant middle-class Americans. This act of labeling was particularly relevant for those determined to be “morons,” a designation that often translated into a highly functioning and educable individual who resisted the norms of propriety. Such individuals were increasingly subject to institutionalization in the first four decades of the twentieth century.⁷ The call for the eugenic sterilization of institutionalized persons hinged on the assumption that feeble-mindedness was hereditary. The theory was based on a number of widely publicized family studies, such as Henry H. Goddard’s seminal text, *The Kallikak Family, a Study in the Heredity of Feeble-Mindedness*, which argued that one ill-considered mating could produce a burgeoning line of degenerates whose number increased exponentially with each generation.⁸ The argument in favor of sterilization held that halting the progress of these hereditary lines of degeneracy would benefit both the individuals involved and the state by allowing such persons to live without the risks or responsibilities of parenthood and by freeing the state of the fiscal implications of their care.⁹

While the AES had a committee dedicated to legislative activity, Harry H. Laughlin, superintendent of the Eugenics Records Office, took a special interest in the progress of eugenic legislation. Not unlike his very public role in the passage of the immigration restrictions in the early 1920s, when he proudly took up the position of “Expert Eugenical Agent” to testify before the Congressional committees on the biological quality of various national populations, Laughlin took it upon himself to survey the field of sterilization legislation and

7. Steven Noll, *Feeble-Minded in Our Midst: Institutions for the Mentally Retarded in the South, 1900–1940* (Chapel Hill, N.C.: University of North Carolina Press, 1995), 1–4.

8. Henry H. Goddard, *The Kallikak Family, A Study in the Heredity of Feeble-Mindedness* (New York: Macmillan, 1912), and *Feeble-Mindedness: Its Causes and Consequences* (New York: Macmillan, 1914).

9. Stephen Jay Gould has effectively explored and debunked Goddard’s data and conclusions from the Kallikak study, noting that by the late 1920s Goddard had recanted his stance on feeble-mindedness being incurable, uneducable, or necessitating institutionalization. Stephen Jay Gould, *The Mismeasure of Man* (New York: W. W. Norton, 1981), 158–74. For more on family studies, see Nicole Hahn Rafter, ed., *White Trash: The Eugenic Family, 1877–1919* (Boston, Mass.: Northeastern University Press, 1986).

to advocate vigorously for further activity. In 1922 and again in 1926, he published an optimistic and exhaustive survey of the nation's sterilizations statutes, entitled *Eugenical Sterilization in the United States*. Given the judicial and legislative victories that the movement was experiencing, he exhorted his readers to support a further expansion of eugenic sterilization on social and racial grounds. Laughlin explained to his readers that, "inadequates and producers of inadequates in the body politic are not capable of obeying, on their own initiative, laws concerning mate selection and human reproduction. These lowest human family strains must, therefore, be taken in hand by the state, for the promotion of the general welfare."¹⁰

Thus, in leading the charge for the passage of eugenic sterilization statutes around the country, Laughlin called for the sacrifice of the individual to the promotion of the "general welfare." He based this demand on the notion that hereditary factors controlled the essential elements of human existence, not only physical traits, but also emotional and psychological factors. This perfectionist vision of social development foregrounded the collective progress of the community over the rights of the individual to bodily integrity or personal choice. Similarly, it emphasized the role of the credentialed expert in shaping social policy and cultural norms. Laughlin's advocacy of eugenic sterilization throughout the decade only emphasized his dedication to eugenics as comprehensive social ideology.

As Catholics became aware of the growing popularity of eugenic sterilization and other eugenics policy initiatives, they were faced with a significantly developed system of thinking about society and the role of individual human beings in that society, though it was markedly different from their own understanding of natural rights. Despite this distinct difference of perspective, initially, eugenicists were moderately successfully in enacting laws in states with significant Catholic populations, such as California, Connecticut, Delaware, Maine, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Dakota, and Wisconsin. However, in states where Catholics were highly concentrated, eugenicists had a tougher time. According to the 1926 census of religious bodies, of the 18.6 million Catholics in the United States, slightly more than half of that population was located in Illinois, Massachusetts, New Jersey, New York,

10. Harry H. Laughlin, *Eugenical Sterilization in the United States* (Chicago: Psychopathic Laboratory of the Municipal Court of Chicago, 1922), and *Eugenical Sterilization: 1926; Historical, Legal, and Statistical Review of Eugenical Sterilization in the United States* (New Haven, Conn.: The American Eugenics Society, 1926), 2-3.

Ohio, and Pennsylvania.¹¹ Of those states, only New York and New Jersey enacted eugenic sterilization laws, both of which were declared unconstitutional and not successfully replaced. Thus, even states with significant Catholic populations were sites of contestation over eugenic sterilization.

By 1910, the passage of the earliest eugenic sterilization statutes in the United States attracted the attention of Catholic moral theologians. In an extended exchange of perspectives and opinions on state-sponsored vasectomies for criminals and hereditary degenerates in the *American Ecclesiastical Review*, theologians debated "the attitude which a Catholic is in conscience bound to take should the subject be brought before them in a practical way."¹² Generally, the authors presented two perspectives. The first group maintained that vasectomy operations were immoral since the procedure involved a grave mutilation of the human body, and only those grave mutilations that were necessary for the conservation of human life could be judged morally justified. Also, immoral means could not be used to achieve just ends. So, while the result of decreasing degeneracy would be a positive end, the immediate end of the operation was a grave mutilation that was not a life-saving measure. The second group of theologians submitted that since the patients in question were not only defectives, but also criminals, the state had the right to perform the operation for the greater protection of society.¹³ These two positions dramatically illustrate the ways in which the debates surrounding eugenics policy initiatives pitted the integrity and dignity of the individual against the welfare of the state.

Though this initial discussion of hereditary criminality, grave mutilation, and the role of the state provided the groundwork for

11. The Catholic populations in those states are as follows: New York (3.1 million), Pennsylvania (2.1 million), Massachusetts (1.6 million), Illinois (1.3 million), New Jersey (1 million), and Ohio (1 million). The information on the ratio of Catholics to the total population of the states was calculated using data from the 1920 *U.S. Census*, the 1930 *U.S. Census*, and the *Census of Religious Bodies: 1926, Volume II* (Washington, D.C.: Government Printing Office, 1929), 1256.
12. "The Morality and Lawfulness of Vasectomy," *American Ecclesiastical Review* (henceforth *AER*) 44 (May 1911): 562–63. Quote from 563.
13. *Ibid.*, 563–65. The exchange continued for a number of issues, but the participants failed to reach a consensus. In addition to the work of the moral theologians, Dr. Austin O'Malley submitted a piece that clarified the physical aspects of the operation and offered his own reading of the morality question. See Austin O'Malley, "Vasectomy in Defectives," *AER* 44 (June 1911): 684–705; Anonymous, "The Morality and the Lawfulness of Vasectomy," *AER* 45 (July 1911): 71–77; Steven M. Donovan, "Summing up the Discussion on Vasectomy," *AER* 45 (September 1911): 313–19; Theodore Labouré, "One Last Remark on Vasectomy," *AER* 45 (September 1911): 355–59; "P. Schmitt on the Gravity of the Mutilation Involved in Vasectomy," *AER* 45 (September 1911): 360–62.

subsequent discussions among Catholics about the morality of sterilization, the issue was also increasingly linked to another topic of social and moral controversy: contraception. Since both eugenic sterilization and contraception involved the limitation of the generative faculties, Catholic theologians tended to discuss them in similar terms. The main natural law argument against contraception maintained that such practices constituted a perversion of the natural function of the reproductive organs. In the words of prominent moral theologian and political theorist, John Ryan, "The generative faculty has as its specific and essential end the procreation of offspring. . . . When the faculty is so used that the very use of it renders the fulfillment of its very purpose impossible, it is perverted, used unnaturally, and therefore sinfully."¹⁴ By extension, sterilization represented a more grave and permanent frustration of that natural function, which required a sufficient motivation, such as preserving the life of the individual.

Often, prominent Catholic social thinkers such as Ryan argued that the growing birth control movement derived its popularity from the desire of individuals to ease their material situation. Also, Ryan repeatedly argued that claims by eugenicists and birth controllers that the selective use of contraception by the working classes would contribute to the betterment of the quality of the population were evidence of a failure to appreciate intrinsic human worth. Contrary to the ideology of eugenics, Ryan explained that "the Church always looks upon the spiritual and moral side of individuals and institutions as much more important than their physical aspects or consequences." In addition to this fundamental difference in perspective, Ryan questioned the ambiguities of eugenics claims that "subnormal" persons endangered the social welfare. He suggested that the goal of preserving the "welfare of the race" was "a mere abstraction that corresponds to no definite idea; or it means the welfare of the fortunate majority who do not desire the inconvenience of helping to support any considerable number of defectives." In Ryan's mind, there could be no guarantee of justice when the calls for reproductive restrictions were based on selfishness, economic gain, or racial prejudice.¹⁵

Hence, by the time that eugenic sterilization statutes began to reappear on the agenda of the state legislatures in the early 1920s, both Catholics and eugenicists had articulated a social vision that

14. John A. Ryan, "Family Limitation," reprinted in *Family Limitation and The Church and Birth Control* (New York: Paulist, 1916), 5.

15. Ryan, "The Church and Birth Control," reprinted in *Family Limitation and The Church and Birth Control* (New York: Paulist, 1916), 16–19.

linked reproduction and welfare. While Laughlin called for a forceful state that would assist in the perfection of the population, Ryan and other Catholic theologians cautioned against the motivation of persons who would restrict the reproduction of the poor and differently abled. This caution recognized the significant emphasis on the integrity of both the human person and the family unit in the Catholic teaching on social and economic justice. Such a perspective was distinctly at odds with eugenic notions of racial improvement.

II. THE EXPERIMENTAL PERIOD

Though theologians were increasingly of one mind about the moral issues surrounding eugenic sterilization, by the middle of the 1920s U.S. Catholics had yet to devise effective means of lobbying against such legislation in the state houses. In fact, the methods of approaching legislators were haphazard and quite varied by location. In some cases individuals took the initiative to contact the National Catholic Welfare Conference in hopes of receiving guidance from the General Secretary, the Reverend John J. Burke, and the staff of the Social Action and Legal departments. In other cases, local prelates orchestrated their own methods for responding to the popular legislation. These attempts to address legislators involved the active participation of not only clergy, but also lay activists—lawyers, politicians, doctors, social workers, and leaders of a variety of guilds and clubs.

In 1926 Mary G. Hawks, President of the National Council of Catholic Women, wrote to Burke concerning a sterilization bill before the legislature in New Jersey.¹⁶ As the President of the NCCW, Hawks showed an eagerness to protest the New Jersey legislation that was part and parcel of her position as a lay leader of an organization that actively pursued the church's social justice mission in both private and political arenas.¹⁷ Given her experience as an activist, Hawks

16. The legislative activity in New Jersey in 1926 reflected a resurgence of interest in the eugenic benefits of sterilization. In 1911 the state legislature passed and then Governor and future president, Woodrow Wilson, signed a statute that provided for the sterilization of inmates of state reformatories and charitable or penal institutions. The law targeted persons who, in the evaluation of a state board of examiners, had conditions that were unlikely to improve, thus making their reproduction inadvisable. Though there were five state institutions that qualified for sterilizing inmates under the law, the statute faced a constitutional challenge before any operations were done. On November 18, 1913 the New Jersey State Supreme Court declared the law unconstitutional on the grounds that it violated the equal protection clause of the Fourteenth Amendment. By the middle of the 1920s the eugenic sterilization lobby had regained its momentum and again encouraged the state legislature to pass another sterilization statute. See Harry H. Laughlin, *Eugenical Sterilization in the United States*, 10, 80, and 174.

17. Founded in 1920, the National Council of Catholic Women was an outgrowth of the National Catholic War Council's Committee on Women's Activities. Under the auspices

approached Burke seeking his approval of her plan to counteract the efforts of the eugenics policy advocates. In cooperation with the head of the Federation of Holy Name Societies, the NCCW had requested a hearing on the bill, in which she and the Diocesan Director of the Holy Name Society would speak out in protest against the bill. Their status as laypersons would represent the views of ordinary Catholics in a way that clergy would not be able. In a state where almost 30 percent of the residents were Catholic, they were sure to be given a serious audience.¹⁸

Though Hawks had engineered a way for lay Catholics to have their voices heard on the sterilization issues, she was far from certain about just what exactly that message to the legislature should be. Hence, Hawks wrote to Burke for advice on constructing a convincing argument against sterilization. She explained to Burke that she wanted to quote an address from prominent Catholic priest and psychiatrist, Dr. Thomas Verner Moore, on the topic of the "Sub-Normal Child," in which he argued against the scientific claim that mental deficiency was primarily hereditary. Additionally, Hawks proposed to make the argument "that the citizens of New Jersey are asked to legalize a serious violation of the person and personal rights of defenceless [sic] citizens for an end not justified by the scientific findings."¹⁹ Thus, Hawks wanted to present objections based on the grounds of (natural) rights and scientific veracity.

Burke wrote two letters in response to Hawks's request for help with the New Jersey legislation. Well aware of the secular environment in which she would give her testimony, he counseled: "While

of the Welfare Conference's Department of Lay Organizations, which was directed by Cleveland Bishop Joseph Schrembs, the NCCW coordinated and connected the variety of laywomen's societies and organizations throughout the country. The NCCW succeeded in sustaining a significant and vibrant connection among women's groups around the country. During the decades between its founding and World War II, the Council took an active role in opposing the Church's persecution in Mexico; opposing the Sheppard-Towner Act; fighting the distribution of contraception and contraceptive information; participating in immigrant Americanization and education work; establishing community houses; and pursuing social justice causes and family issues. In addition to working on these varied issues, beginning in 1921, the NCCW sponsored the National Catholic School of Social Service, which trained a legion of Catholic social workers. Such activities made the women of the NCCW integral participants in the Catholic effort to thwart eugenic sterilization statutes. See Ruth O'Halloran, "Organized Catholic Laywomen: The National Council of Catholic Women, 1920-1995" (Ph.D. diss., Catholic University of America, 1995), chapters 1-3.

18. The information on the ratio of Catholics to the total population of the states was calculated using data from the *1920 U.S. Census*, the *1930 U.S. Census*, and the *Census of Religious Bodies: 1926, Volume II*, 1256. The New Jersey total population in 1926 was approximately 3.76 million persons, and the Catholic population that year was 1.06 million persons.
19. Mary G. Hawks to John J. Burke, 6 February 1926, NCWC Papers (Collection 121).

Catholic authority is the last word on the subject for us, it is only an opinion to those outside the Church. It is better to go along the line that such a proposal is inexpedient and will not accomplish the end it is designed to accomplish." Burke recognized the need for Catholics to present a balanced approach to social questions in the pluralistic environment of the American political area. Thus, in the first letter he laid out a number of logistical and theoretical matters that made eugenic sterilization an unrealistic policy measure. His arguments refuted the notion that sterilization was a just punishment, an effective deterrent, or a therapeutic remedy. In the second letter Burke provided Hawks with statistics from specific clinical studies examining heredity and mental deficiency that suggested that mental deficiency was not primarily hereditary. Burke urged her to base her testimony on scientific grounds rather than on the issues of individual rights or moral law.²⁰

Similarly, when in February 1927 a priest in Vermont wrote to Burke asking for material about sterilization because a bill was before the legislature, Burke responded with a plan that emphasized the secular, political, and practical reasons for rejecting sterilization as an effective form of public policy. Burke provided the priest with a brief list of clinical studies questioning the hereditary nature of mental deficiency and a more extensive list of references to treatments of the moral issues involved with sterilization. However, rather than urging the clergyman to present points of moral argument to the legislature, Burke suggested a more practical plan that reckoned with the realities of the American political system:

The practical means of defeating such legislation is to have medical authorities who are informed in the premises to present their arguments against to legislators. Also, it would be very advisable to have at least one capable lawyer of distinction who could address a legislative committee. The laymen, doctor and lawyer, are usually more effective than the priest, for the latter's arguments, we have found, are generally looked upon as "religious." Indirectly, Catholic organizations of men and women can do good work by voicing their own intelligent protest. If general medical organizations, or organizations of lawyers, or non-Catholic welfare organizations, could be led to voice their protest, it is always helpful.²¹

Burke's plan reflected his sensitivity to the complex political and social realities facing Catholics in the United States in the 1920s. He counseled that the best way to wage the battle against sterilization

20. Burke to Hawks, 12 February 1926, NCWC Papers (Collection 121).

21. Burke to Rev. William P. Crosby, 2 February 1927, NCWC Papers (Collection 121D).

legislation was to focus on scientific and legal realities in the context of the American political tradition, not to focus on Catholic moral theology.

Around the country, Catholic activists began to work to influence their state legislatures when eugenic sterilization bills were introduced. Though Burke offered advice to those who contacted him about eugenics and sterilization, not everyone sought his counsel. In addition to the inquiries about New Jersey and Vermont, the press briefings provided by the NCWC News Service, which reported on the proceedings of the legislatures, indicated a flurry of activity in other states concerning sterilization statutes during the spring of 1927. Between February and April, the News Service reported that eugenic marriage and sterilization legislation was under consideration in Colorado, Indiana, Maryland, Minnesota, New Jersey, Ohio, Vermont, and West Virginia.²²

In the midst of this activity, Catholic strategies in opposing sterilization legislation reflected two distinct considerations: the conditions of the political environment in the United States and Catholic teaching on the rights of the citizen and the role of the state. In reminding his correspondents that Catholic moral teaching “is only an opinion to those outside the Church,” Burke pointed to the precarious balance that Catholics had to strike in honoring the authority of the Church and participating in the democratic political process. This situation had troubled Catholics in American public life for decades, as they faced periodic accusations of having divided loyalties and of being so disciplined by Church structures and teachings as to be patently incapable of participating in liberal, democratic structures. The climate for Catholics in this regard was particularly unfriendly during the 1920s due to a resurgence of xenophobia, which drew on a long tradition of anti-Catholicism that questioned the ability of Catholics to participate fully in democratic society. Hence, as Catholics registered their objections to eugenics policy initiatives, they needed to remain faithful to their moral teachings while functioning within the context of American political traditions.²³

22. “State Legislatures Discuss Anti-Evolution Measures Propose Marriage Reforms,” (NCWC News Service) *The Tidings* (February 25, 1927): 6; “State Legislatures Discuss Bills of Interest to Catholics,” (NCWC News Service) *The Tidings* (March 4, 1927): 7; “Quantity Production Marks Output in Legislatures of Many States,” *The Tidings* (March 25, 1927): 4; “State Legislatures Struggle with Several Eugenic Measures,” (NCWC News Service) *The Tidings* (April 22, 1927): 13.
23. The best account of nativism in the U.S. continues to be John Higham, *Strangers in the Land: Patterns of American Nativism, 1860–1925* (New Brunswick, N.J.: Rutgers University Press, 1955). The tendency for non-Catholics to question the fitness of Catholics to participate in liberal democracy is long-standing and deftly examined by John T.

Aware of the popular perception that Catholicism was antithetical to democracy, in 1922 John Ryan produced a discussion of the Catholic doctrine on Church and State that reveals a good deal about the emerging strategies that Catholic activists were using to oppose sterilization statutes. In part to diffuse the suggestions that Catholicism and democracy were incompatible, Ryan carefully outlined the Catholic teaching on the distinct rights and responsibilities of the Church, the State, and the citizen in relationship to one another. Drawing on the teachings of Pope Leo XIII in his encyclicals, *Immortale Dei* (The Christian Constitution of States, 1885) and *Rerum Novarum* (On Labor, 1890), Ryan explained that the Catholic Church and the secular State maintain separate spheres of authority, with the Church having dominion over areas of moral law and the State having dominion over areas of temporal and civil law.²⁴

Of course, Ryan recognized that situations arose in which there were areas of overlapping jurisdiction; primarily such conflicts involved issues of marriage and education. Indeed, marriage—and by extension matters of sexuality and reproduction—and education proved significant points of controversy for Catholics in the 1920s.²⁵ Given these instances of conflict, an understanding of the rights and duties of both States and citizens became essential. According to Catholic doctrine, “the State is under obligation to promote the welfare of its citizens, as a whole, as members of families, and as members of social classes,” but the jurisdiction of the State is not so complete as to allow it to violate a person’s natural rights.²⁶ In his discussion of natural rights, Ryan emphasized the affinity between Catholic teaching and the political theory of rights articulated in the founding documents of American democracy. These rights—the right to life (freedom from arbitrary physical assault), liberty (freedom of movement, education, religion, speech, and writing), and the pursuit of happiness (the rights of marriage and property)—belonged to each individual “because of his nature, because he is a person, and because of his intrinsic sacredness. As the State does not create or confer these rights, it cannot take them away.” In the United States, Ryan maintained, natural rights were also civil rights.²⁷

McGreevy in *Catholicism and American Freedom: a History* (New York: W. W. Norton, 2003).

24. John A. Ryan, *The State and The Church* (Washington, D.C.: NCWC, 1922), 42–49.

25. See for example, Thomas J. Shelley, “The Oregon School Case and the National Catholics Welfare Conference,” *Catholic Historical Review* 75:3 (1989): 439–57; and Kathleen Tobin-Schlesinger, “Population and Power: the Religious Debate over Contraception, 1916–1936” (Ph.D. diss., University of Chicago, 1994).

26. Ryan, *The State and The Church*, 207.

27. *Ibid.*, 276–77.

Given the Catholic understanding of rights, the State and the citizen are bound by what moral theologians refer to as "legal justice," which involves the obligation of citizens to obey the laws and to take whatever steps are necessary to participate in the securing of the common good. In this respect, Ryan explained that in a representative political system, citizens are bound to perform their electoral duties in selecting fit legislators and in protesting unjust laws. Additionally, Ryan argued that while Catholics might consult Church teaching on matters of morality, their political protest, or even civil disobedience, would constitute the activity of concerned and informed citizens who wished to promote the common good through normal liberal democratic structures, rather than the direct interference of the Church in civil matters.

Thus, in working to construct an efficacious response to the campaign for eugenic sterilization statutes around the country, Catholic activists formulated political strategies that reflected Catholic teaching on the relationships among Church, State, and citizen. Since moral theologians were coming to the conclusion that eugenic sterilization statutes would constitute a violation of natural rights by unnecessarily inflicting bodily harm upon individuals, Catholic citizens were under obligation to engage the political process in the effort to thwart the passage and implementation of such statutes. However, because Catholics existed within the vast plurality of interest groups in the United States, they recognized the need to frame their arguments in such a way as to provide non-Catholics with significant reasons to reject eugenics policy initiatives.

III. OHIO

While Catholics around the country were working to defeat sterilization statutes, the activists in Ohio were engaged in a legislative struggle that would produce the first literature designed to help lay Catholics protest against eugenics legislation. During the spring of 1927 two separate bills calling for eugenic sterilization were introduced in the Ohio State Senate. The first bill dealt with sterilization of degenerates prior to marriage, and the second called for the sterilization of institutionalized hereditary defectives and criminals.²⁸ Theoretically, these two measures would ensure the eugenic future of much of the Ohio population. However, where eugenics supporters saw scientifically based social policy, Catholics saw dubious science

28. National Council of Catholic Men, *Special Bulletin on Ohio Sterilization and Marriage License Bills*, (Washington, D.C.: National Catholic Welfare Conference, 1927), 1-2, located in NCWC Papers (Collection 121D).

and policy that contradicted their understanding of natural law and social justice.

At the end of March, Charles F. Dolle, the Executive Secretary of the National Council of Catholic Men (NCCM), brought these bills to the attention of the Ohio bishops. He urged the heads of the Cleveland, Columbus, and Cincinnati dioceses to send "some high medical authority" and other appropriate representatives to address the House Public Health Committee. In the meantime, Dolle had had a positive meeting with Governor Donahey that suggested the Governor could be persuaded to reject the compulsory sterilization legislation.²⁹ In an effort to better inform the Governor on the emerging Catholic position on eugenic sterilization, Dolle collaborated with John Burke at the NCWC to produce a brief on the subject. Eventually, the NCCM published that brief in the form of an "Information Bulletin" that they distributed to lay organizations.³⁰ The leadership of the NCCM suggested that the pamphlet would "help our groups and others to a better understanding of this kind of legislation, a greater realization of the evil consequence which will result from it and assist them to oppose such measures."³¹ In this effort to educate and mobilize the lay population, Dolle oversaw the creation of a piece of literature that exemplified the Catholic strategy for opposing eugenics policy initiatives, and that provided a format that would be replicated in future publications.³²

29. Charles F. Dolle to Bishop Joseph Schrembs, 31 March 1927, Joseph Schrembs Papers, Archives Diocese of Cleveland (henceforth Schrembs Papers, ADC).

30. Bishop Schrembs correspondence with Dolle about the Ohio legislation and the subsequent production of the "Information Bulletin" provided a significant link between the national and the local structures of U.S. Catholicism. Bishop Schrembs was Chairman of the Department of Lay Organizations, which oversaw the NCCM and monitored Dolle's administration of the day-to-day affairs of the organization. Through the Department of Lay Organization Schrembs had guided the foundation and development of both the National Council of Catholic Men and the National Council of Catholic Women to foster lay activism in local dioceses around the country. While the NCCW developed a vibrant national organization, the NCCM functioned more directly under Schrembs's control. The bishop envisioned the organization as being deeply involved with social issues, such as the fight against birth control, the campaign for parochial schools, the care of immigrants, and the education of Catholic men on social and moral teaching. Opposing sterilization legislation provided an opportunity for Catholics to act on the social justice mission embodied in their organizations and to fulfill a vision of lay activism that Schrembs had advocated since the early years of the NCWC. Thus, the situation in Ohio allowed him to exercise his authority as spokesperson for the Catholics within the Diocese of Cleveland and to oversee the involvement of the NCCM in the hopes of providing materials to educate the laity about the variety of reasons for opposing eugenic policy initiatives. See Martin Frank Poluse, "Archbishop Joseph Schrembs and the Twentieth Century Catholic Church in Cleveland, 1921-1945" (Ph.D. diss., Kent State University, 1991), 250-55.

31. *Special Bulletin*, 1-2, NCWC Papers (Collection 121D).

32. Dolle to Schrembs, 31 March 1927, Schrembs Papers, ADC; and *Special Bulletin*.

Organizationally, the "Information Bulletin" provided a blueprint for subsequent materials produced to educate the Catholic population about eugenics. First, it described both of the pieces of legislation in detail and then discussed the procedural problems associated with each bill involving the consent and appeal process. Second, the bulletin discussed the medical opposition to sterilization citing the work of nationally recognized mental health physicians.³³ Third, the document provided statistics on the inheritability of mental defects and the ineffectiveness of sterilization as a means to halt the spread of venereal disease. Finally, the bulletin discussed the moral aspects of the legislation, arguing that no state of emergency existed that could warrant giving the state the power to inflict such a bodily intrusion upon its citizens. The text moved beyond strict natural law arguments to reflect on the social and cultural implications of the laws, suggesting that the vast power granted to the state through the legislation would eventually be used to oppress the poor: "Feeble-mindedness is very often the cause of poverty and poverty is so often the cause of feeble-mindedness that there is danger of confusing one with the other. It is upon the poor that these laws will bear most heavily. Therefore, those who have human dignity at heart ought to exercise a very careful vigilance lest under the guise of eugenic reform the rights of the poor are infringed."³⁴ This strategy illuminated the web of intricate connections in Catholic moral and social teachings, articulated most clearly in Leo XIII's *Rerum Novarum*, which linked family and reproductive issues to demands for both social and economic justice.³⁵

In addition to the efforts to educate the laity on questions raised by eugenic sterilization, Ohio Catholics bombarded the state legislature with their views on the measures under consideration. Bishop Joseph Schrembs, speaking on behalf of the "700,000 Catholic Citizens of the Diocese of Cleveland," told the members of the Public Health Committee that "Compulsory sterilization of so called feeble-mindedness in any of its degrees is a real menace to the Community and would

33. The Bulletin drew from the work of Dr. William E. Fernald, former superintendent of the Massachusetts School for Feeble-minded, and Dr. George K. Pratt, Assistant to the Medical Director of the National Committee for Mental Health. Fernald published the first medical critique of eugenics in 1919, based on following the lives of 646 nonsterilized feeble-minded persons who had been discharged from a state institution in Massachusetts. They exhibited a low marriage rate and a low birth rate, contrary to the claims of sterilization advocates. Fernald argued that eugenicists mistook a high birth rate among the poor and uneducated for that of the mentally challenged. Reilly, *The Surgical Solution*, 122.

34. *Special Bulletin*, 9.

35. Leo XIII, *Rerum Novarum*, in *The Papal Encyclicals in Their Historical Context*, ed. Anne Fremantle (New York: Mentor Books, 1956), 171-72.

lend itself in the hands of unscrupulous persons to the destruction of the most sacred human rights."³⁶ In a letter to the State legislature, Bishop James J. Hartley and Archbishop John T. McNicholas also urged caution about putting such decisions in the hands of public officials.³⁷ The Catholic District League of Cleveland was more forceful, condemning the legislation "as an outrage upon humanity, as a brutal interference with human liberty; as one of the worst instances of autocratic tyranny; as an attempt at barbarous enslavement of the people of this commonwealth; as a savage onslaught upon the sanctity of human personality; and as a first step towards introducing into the civilization of the twentieth century the views and usages of semi-brutes."³⁸ In the eyes of many Ohio Catholics, with the sterilization laws the potential for human rights abuses at the hands of the state was simply too grave for them not to speak out.

In lobbying the state governments, diocesan officials and local activists were producing new materials that synthesized opposition to sterilization from a number of perspectives. Such literature included theological and legal opinions that suggested that sterilization laws were unnecessary and impractical measures that were ripe for abuse, exposing the disadvantaged to grave danger. Compiling these materials also allowed them to gather the minimal scientific and social scientific literature that refuted the claims of eugenics advocates. In this way, Catholics were able to marshal the isolated and dispersed critical objections to eugenics policies, while claiming to speak on behalf of entire diocesan populations and active organizational memberships. This activism stood in contrast to biologists such as Raymond Pearl and Herbert Spencer Jennings, and social scientists such as Lester Ward and Franz Boas, who spoke out against the eugenics movement, but were unable to mobilize a significant constituency to support their views.³⁹

On April 15, 1927, the *Cleveland Catholic Universe Bulletin* reported that the sterilization bills died in the House of Representatives in Columbus, and that there was little chance that the bills would be revived during 1927 or 1928. The concerted effort by Catholics around the state of Ohio no doubt contributed to the defeat of the Senate sterilization bill. In addition to the statements by the hierarchy and the

36. Handwritten note on Dolle to Schrembs, 31 March 1927; McFadden to Ryan, telegram sent to members of the Health Committee, no date; and telegram to John A. Hadden, State House, 8 April 1927, Schrembs Papers, ADC.

37. McNicholas's statement to Ohio State Legislature, quoted in "State Legislatures Struggle with Several Eugenic Measures," *Tidings* (April 22, 1927): 13.

38. Quoted in "Sterilization Bill is Killed," *Catholic Universe Bulletin* (April 15, 1927): 1.

39. Kevles, *In the Name of Eugenics*, 113–47, and Reilly, *The Surgical Solution*, 111–27.

efforts of the National Council of Catholic Men, a variety of Catholic organizations issued statements of opposition to the legislation.⁴⁰ Hence, by the middle of April 1927, Catholics could take credit for having a hand in defeating eugenic sterilization legislation in Ohio and a number of other states. However, they appeared to be unaware of the developments taking place in the Virginia courts of appeal during that same time period.

IV. *BUCK v. BELL*

On May 2, 1927, the Supreme Court issued a decision in the *Buck v. Bell* case affirming the constitutionality of the Virginia involuntary sterilization law. Guided through the legislature in 1924 and signed into law on March 20, the Virginia statute provided superintendents of five state institutions with the option of petitioning a special board with requests to sterilize inmates who they believed would benefit from the operation. Given the vast and successful history of constitutional challenges to compulsory sterilization statutes, state officials recognized the need to set up a test case for the new Virginia law. Dr. A. S. Priddy, the superintendent of the State Colony for Epileptics and Feeble-Minded, petitioned the board to sterilize Carrie Buck, in part to secure the standing of the statute with the appeals courts. The story of Carrie Buck, her mother Emma, and her daughter Vivian, provides a prime example of the zealotry of eugenics supporters and the degree to which "feeble-mindedness" served as a catchall term for social nonconformity.⁴¹

On April 1, 1920, Emma Buck faced a commission of experts who were charged with deciding whether or not to admit her to the Virginia Colony for Epileptics. A convicted prostitute afflicted with syphilis, Emma was the "widowed" mother of three children, some of whom were born out of wedlock. On that day in April the members of the commission issued Emma's orders for commitment, and six days later she was admitted to the Colony. She remained institutionalized for the remainder of her life. Upon her admission to the Colony, Emma's daughter, Carrie, was placed in the foster care of J. T. and

40. "Sterilization Bill is Killed," *Catholic Universe Bulletin* (April 15, 1927): 1.

41. Though the details of Carrie's admission to the Virginia Colony for Epileptics and Feeble-minded were not widely known at the time of the landmark Supreme Court case, J. David Smith, an historian at Lynchburg College, and K. Ray Nelson, former director of the Central Virginia Training Center, unearthed Carrie's story and brought it to the public in a moving account published in 1989 called simply *The Sterilization of Carrie Buck*. The details of Carrie Buck's story up to the Supreme Court decision have been taken from this text. J. David Smith and K. Ray Nelson, *The Sterilization of Carrie Buck* (Far Hills, N.J.: New Horizon, 1989). See also Reilly, *The Surgical Solution*, 86–87.

Alice Dobbs. In the fall of 1923, the Dobbs, claiming that Carrie was feeble-minded, epileptic, dishonest, and morally delinquent, petitioned to have her committed to the same institution that housed her mother.

Carrie was seventeen years old and pregnant when her commitment hearing was held on January 23, 1924. The Dobbs had failed to inform the officials that, according to Carrie, she had been raped by one of their nephews, relegating her to be judged a promiscuous young woman. As superintendent of the Colony, Dr. A. S. Priddy treated "deviant" sexual behavior or "moral deficiency" as a part of his list of characteristics warranting commitment and eventual sterilization. In his 1922–23 biennial report for the Colony, he explained that "the paroling of unsterilized, physically attractive young women from the institution (to the) best of families is not without danger; . . . it is not infrequent for them to be returned to the institution pregnant despite the best of care which was given them."⁴² Priddy's zealous support of sterilization would come to bear upon Carrie shortly after she entered the Colony on June 4, 1924, following the birth of her daughter Vivian. Just after her arrival, Priddy testified before the State Hospital Board, and Carrie's appointed guardian, R. G. Shelton, that the young woman needed to be sterilized so that she could be released from the institution to lead a safe and productive life. Estimating Carrie's mental age at nine years old, Priddy rejected the suggestion that proper training might facilitate Carrie's release. He insisted that the only alternatives were sterilization or total confinement for her childbearing years. Conveniently, the newly passed Virginia sterilization statute gave Priddy and the State Hospital Board the power to subject Carrie to the operation.

At the same time, eugenics advocates in Virginia gained a venue for testing the constitutionality of the statute in the courts. Priddy and Aubrey Strode, the attorney for the Colony, began to pursue the case right away, gathering testimony and expert witnesses. Predictably, they solicited a deposition from renowned eugenicist and sterilization advocate Harry Laughlin. Although Laughlin never actually met with Buck but only read her files, he declared that Carrie was a prime example of a low-grade moron, and her feeble-mindedness was most likely hereditary. Based on such expert testimony and Priddy's recommendation, the State Hospital Board approved the petition for Carrie's sterilization. Once the board approved the order for Buck's sterilization, an attorney was hired to represent her through the appeals process.

42. Smith and Nelson, *The Sterilization of Carrie Buck*, 32–33.

When the matter finally came before the Circuit Court of Amherst County in November of 1924, Irving Whitehead, a close boyhood friend of Strode, represented Buck. This close personal relationship ensured that Carrie would not benefit from zealous representation on her behalf during the appeals process. At the hearing, Strode called eleven witnesses to establish, anecdotally and professionally, the mental deficiency of the Buck family. His case included Laughlin's statement and those of a host of other "experts." Irving Whitehead offered no expert testimony on Carrie Buck's behalf. By February 1925 Judge Bennett Gordon issued his decision sustaining the Virginia law.⁴³ Whitehead pursued the matter through the Virginia Court of Appeals to the Supreme Court in September of 1926.

The United States Supreme Court issued its opinion on May 2, 1927 with an eight to one affirmation of the Virginia involuntary sterilization law. Writing for the majority, Justice Oliver Wendell Holmes, Jr. rendered a decision that said that the Virginia statute did not violate the guarantee of due process contained in the Fourteenth Amendment, since it provided for public hearings and the possibility of appeal. He reasoned that,

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.⁴⁴

Holmes's decision indicated that the State's need to lessen the burdens brought about by individuals unable to take care of themselves outweighed the right of individuals to procreate. Justice Pierce Butler, a Catholic, dissented on the decision, but he failed to write an opinion supporting his position. Carrie was sterilized on October 19 and paroled in November.

There is no existing record that the NCWC Legal Department was monitoring the progress of the Buck case through the appeals process. On May 7, 1927 Patrick Ward, Director of the Bureau of Publicity and Information, submitted a copy of the evidence and the decision to NCWC General Secretary John Burke. This packet included the arguments from Whitehead, Holmes's decision, and excerpts of Harry

43. During Gordon's period of deliberation Priddy died of Hodgkin's disease. His assistant, Dr. J. H. Bell, assumed his position as head of the Virginia Colony.

44. *Buck v. Bell*, 274 U.S. 200; 47 Sup. Ct. 584 (May 2, 1927), 585.

Laughlin's testimony and other experts. Significantly, this collection of materials included no analysis on Ward's part, and it was not followed by analysis from William Montavon, Director of the Legal Department.⁴⁵ There are a number of possible explanations for the apparent lack of awareness about the case on the part of the NCWC. First, given the fact that the Catholic population in Virginia—2 percent of the total population in 1926—was small compared to areas in the Northeast and the Southwest, the structural apparatuses for monitoring developments in the legislature likely were missing, and the vigorous lay organizations likely were absent.⁴⁶ Second, and more importantly, since *Buck v. Bell* was a test case, it moved through the appeals process quickly, in no small part because Buck's attorneys offered little resistance on her behalf. Unbeknownst to sterilization opponents, the primary cause for this lack of resistance from Carrie Buck's representatives was their collusion with Priddy at the Virginia Colony. Had Shelton and Whitehead pursued their case more vigorously, they might have sought assistance from representatives of the Roman Catholic Church since they increasingly were successful in opposing eugenic sterilization measures. However, due to cooperation among the attorneys, Catholics were placed in the unenviable position of having to react to the Supreme Court's affirmation, rather than taking an active role in persuading the Court to strike down the statute.

Despite being caught unawares by the developments in Virginia and at the Supreme Court, Catholics in the United States reacted quickly to the judgment. Though the decision received relatively little attention in the mainstream press, warranting only a small article in the *New York Times*, the editorial staff of the *Cleveland Universe Bulletin* took swift notice of the development. They noted that while the decision was not surprising, given the tendency to advocate against the reproduction of those with mental defects, "segregation was the alternative and should be effective in an institution even more than outside." Though theologians had been successful in thwarting laws that "could easily lead to abuse" in the past, the editors speculated that "the supreme court decision threatens to wake up dormant

45. Patrick J. Ward, "Sterilization of Mental Defectives in the State of Virginia," 6 May 1927; and Ward to Burke, Memo regarding sterilization in Virginia, 7 May 1927, NCWC Papers (Collection 121D).

46. The information on the ratio of Catholics to the total population of the states was calculated using data from the 1920 *U.S. Census*, the 1930 *U.S. Census*, and the *Census of Religious Bodies: 1926, Volume II*, 1256. For a summary of the religious history of the Commonwealth of Virginia, see W. Harrison Daniel, "Virginia," in *Religion in the Southern States*, ed. Samuel S. Hill (Macon, Ga.: Mercer University Press, 1983), 335–62.

movements toward like legislation in many states and may create a new religious campaign issue."⁴⁷ This perspective anticipated the increased number of sterilization measures under consideration by state legislatures in the wake of the *Buck* decision, and recognized the volatility of reproductive issues and Catholic politics.⁴⁸ Hot-button issues such as the Catholic stance on birth control and divorce only magnified this tension, and the possibility of adding sterilization to the list of political controversies must have caused some anxiety. However, the growing consensus among the U.S. Catholic moral theologians and lay activists was that eugenic sterilization represented a betrayal of the individual rights that the American political tradition purported to protect.

In the May 14, 1927 issue of *America*, the editors composed a strongly worded condemnation of the decision. While they maintained the duty of the state to protect the public welfare, they argued that the movement for eugenic sterilization was a diversion from the real causes of social problems. They submitted that the public welfare was not in imminent danger from the population of "defectives" and their offspring, and that other options were available to the state besides sterilization to deal with the problem. In a final forceful statement, the editors blasted the sterilization movement: "Sterilization is only another of those alluring but fallacious shortcuts to social health which have so often led us into the bog. Fundamentally our objection is based on the fact that every man, even a lunatic, is an image of God, not a mere animal, that he is a human being, and not a mere social factor."⁴⁹ Hence, the editors reinforced the notion that, though the preservation of the public welfare was a worthy goal, it was not one that could be advanced through a scheme that violated the personal rights of individual citizens.

In addition to the editorial statements on the decision by May 20, 1927, the *Universe Bulletin* had commissioned a thorough analysis of the Supreme Court decision by a local Jesuit. A history professor at John Carroll University, the Reverend Francis S. Betten, S.J., denounced the decision in the strongest terms as sanctioning a grave violation of natural law. He instructed his readers that sterilization violated the natural law, which applied to every human being, not just

47. "A New Issue," *The Catholic Universe Bulletin* (May 6, 1927): 16.

48. Philip Reilly notes that in the few years following the *Buck* decision, the number of states with sterilization statutes increased from seventeen to thirty. Additionally, while the total number of institutionalized persons who had been sterilized between 1907 and 1927 was 8,515, that number had jumped to a total of 38,087 persons by 1941. Reilly, *The Surgical Solution*, 87, 97.

49. "Unjustified Sterilization," *America* (May 14, 1927): 102.

Catholics. Betten argued that once the state participated in violating the integrity of an individual citizen's body, that state eventually could demand much more than the sterilization of the unfit; it could call for the termination of those individuals. Betten closed his condemnation of sterilization and the *Buck v. Bell* ruling with an ominous image. He told his readers: "While this is being written, there is somewhere a poor weak woman expecting her doom in agony and trembling. Strong hands are laid on her in the name of law, liberty, and civilization. She is dragged away, as once the slaves were dragged to the whipping post. She leaves the shambles a cripple, a degraded person. She may console herself by the assurance of Judge Holmes that her rights have been carefully guarded." Betten's dramatic and specifically gendered image served to reinforce his message that the most helpless were destined to suffer a great injustice at the hands of the state in the wake of the *Buck* decision.⁵⁰

In addition to the forceful public condemnations of the decision in the Catholic press, the NCWC and the NCCM were working behind the scenes to encourage Buck's attorney to file for a rehearing of the case. Charles Dolle made the initial contact with Whitehead offering Catholic support for the petition. According to the rules of the court, they had until June 11, 1927 to ask the Justices to reconsider. The rules of the court dictated that the possibility for a rehearing would be slim, since one of the concurring Justices would have to agree to it, but Dolle persevered nonetheless, making his contacts with Whitehead and Strode. Though it was a long shot, both Whitehead and Strode were enthusiastic about the prospect of bringing the matter before the Court again, not the least because they wished that Oliver Wendell Holmes had discussed the principles of eugenic sterilization more fully in his opinion. In the effort to expedite the drafting of the petition, Dolle offered Whitehead \$100 for his services and agreed to pay for the printing of the brief. After consulting with the NCWC attorney, Burke supported Dolle's effort and agreed that Whitehead

50. Francis S. Betten, S.J., "Sterilization Banned by Natural Law, Says Jesuit," *Catholic Universe Bulletin* (May 20, 1927): 8. This image of the female victim of compulsory sterilization pointed to the central place of motherhood in Catholic social teaching, which is prominent in the discussions of wage justice in *Rerum Novarum*. Significantly, however, Betten's image also foreshadowed a dramatic shift in the gender of persons being sterilized after the *Buck* decision. While at the end of 1927 close to 53 percent of persons ever sterilized in the U.S. had been men, by 1932 the ratio had shifted so that 67 percent of persons sterilized in institutions were women. Reilly, *The Surgical Solution*, 98.

should take the primary public role until and unless it was necessary for a Catholic to make a statement during an oral argument.⁵¹

In the end, the petition for rehearing failed to include anything that stood out as a discernibly “Catholic” contribution. There were no arguments about natural rights or moral theology. Additionally, while the petition argued that the opinion rendered by Justice Holmes contradicted precedent in its interpretation of the cases he cited, the brief did not include a section refuting the testimony of Harry Laughlin or the other experts. Dolle originally included extensive material about the expert testimony in his draft of the brief, but Whitehead rejected his suggestions. In explaining this omission to Burke, Dolle said that Whitehead “felt that since there had been no testimony produced at the hearing and he had made no reference in his argument to a divided opinion upon the subject of the propriety and utility of sterilization, he would not wish to subject himself to criticism or reproach for now bringing it before the Court for the first time.”⁵² There is no sign that Dolle knew that Whitehead and Strode were boyhood friends, so he had no reason to doubt Whitehead’s sincerity in his explanation for leaving that material out of the final petition. Dolle accepted Whitehead’s reasoning in favor of getting the petition filed, even though it contained none of the major objections to the decision voiced by Catholic writers, activists, and social scientists. The resulting petition was not enough to convince the Supreme Court to revisit the *Buck v. Bell* decision. The petition for rehearing was denied, and Dolle’s efforts slipped into obscurity.⁵³

V. IN THE SHADOW OF THE SUPREME COURT

The *Buck v. Bell* decision represented the closing of the “experimental period” in the struggle over sterilization, both for eugenics advocates and for Catholic opponents. Fortified by the affirmation of the Supreme Court, eugenics advocates took the Virginia sterilization statute as a model for their efforts to implement similar legislation in the remaining states of the union. However, just as eugenics advocates felt that the decision marked a turning point for their movement, in many ways it represented a turning point for Catholic opposition to sterilization statutes. Although the Catholic message about eugenics

51. Dolle to Burke, 28 May 1927, and Burke memo, 3 June 1927, NCWC Papers (Collection 121D).

52. Dolle to Burke, 8 June 1927, NCWC Papers (Collection 121D), and “Petition for Rehearing and Argument” for *Buck v. Bell*, NCWC Papers (121).

53. Neither Philip Reilly’s *The Surgical Solution* nor Smith and Nelson’s *The Sterilization of Carrie Buck*, the two most full historical accounts of the *Buck v. Bell* case, include any information about the petition for rehearing.

and sterilization would not achieve its full development until Pope Pius XI issued a definitive statement on the issue at the end of 1930, the tone of the public Catholic engagement with the eugenics movement made a significant departure in the wake of the failure to get the *Buck* decision overturned. Despite the contentious political climate created by Al Smith's presidential campaign, Catholics began to make a more direct, concerted, and public effort to voice their opposition to eugenics policy initiatives.⁵⁴ Though they continued to voice the same concerns about scientific veracity, materialism, and social justice that they had in the past, their statements took on a more forceful quality that expressed their feeling that the public at large was being misled by a destructive social ideology that was based on discrimination and prejudice, not on the preservation of the common good.

Despite his earlier more discrete lobbying efforts, Bishop Schrembs of Cleveland voiced his growing frustration with eugenics when he responded publicly to the establishment of a new eugenics organization in Ohio. Launched by scientist and inventor, Charles F. Brush, the Brush Foundation brought a new urgency to the struggle over eugenics in the state. In a commencement address to the graduates of a nursing training school, Schrembs sarcastically informed his audience that "formerly humanity was referred to as the human race, but according to this new foundation it may be that we are to be classified with the barnyard animals or those of the zoo." Schrembs's comments, which were echoed two weeks later in a *Catholic Universe Bulletin* editorial, reflected his position that the eugenics social ideology denied the integrity and authenticity of individuals and subjected them to unjust manipulation in the name of biological improvement. Rejecting those means, Schrembs argued that the Church's efforts to teach virtue and self-restraint were far more just and effective in motivating individuals to avoid behavior that contributed to physical deterioration.⁵⁵

In the wake of the *Buck* decision, Catholics like the Bishop of Cleveland were more willing to challenge eugenicists, but they needed to be certain that they had the means to educate the laity in support of their protest. Therefore, Ryan dashed off *Human Sterilization*

54. The questions raised about whether or not a Catholic was fit to hold executive office that accompanied Al Smith's campaign for the Presidency prompted John Ryan to draft another text explaining the Catholic teachings on church and state: John A. Ryan, *The Catholic Church and the Citizen* (New York: MacMillan, 1928).

55. "Brush Foundation Deems Humans Barnyard Animals, Bishop Says," *Catholic Universe Bulletin* (June 22, 1928): 1, and "Eugenics: True and False," *Catholic Universe Bulletin* (July 6, 1928): 12.

(1927) as an initial response to the *Buck* decision, arguing that the eugenics movement endangered the welfare of all minority groups:

The differences between the social inconveniences arising from the existence of too many imbeciles and that resulting from the presence of too many Negroes, Mexicans, or other non-Nordics, is a difference only of degree—possibly in favor of the imbeciles. If sterilization is no degradation of personality, no violation of natural rights, why should it not be applied to all the inferior classes that bring more inconvenience than convenience to the politically dominant *elite*?

Throughout the pamphlet, he hammered home the notion that prejudice and materialism motivated eugenicists. According to Ryan, poverty would inevitably be interpreted by eugenicists as a hereditary defect and that their methods were simply “inexpensive short-cuts” proposed by individuals who “are thinking only of comparative costs and quick results.”⁵⁶

At the same time, the leadership at the NCWC saw the need for a more substantial treatment of the issues raised by contemporary reproductive politics. At the Administrative Committee meeting in November 1928, Burke proposed the drafting of three pamphlets dealing with existing state laws on sterilization, the role of heredity in the “propagation of defective, feeble-minded children,” and the “evil results” of sterilization. The Administrative Committee agreed that the issue needed to be pursued, and at the November meeting of the hierarchy the Chairman of the Administrative Committee assured the rest of the bishops that the NCWC would produce at least three pamphlets. Early in 1929 Burke dispatched Patrick J. Ward, head of the Press Department, to secure authors for the various pieces.⁵⁷

While the pamphlets on law and heredity were reasonably straight forward, the piece dealing with the “evil results” of sterilization stimulated a good deal of discussion among NCWC officials. Having examined an internal document that summarized current studies and opinion on sterilization, the Assistant Director of the Social Action Department, the Reverend Raymond A. McGowan, advised Burke that he should consider securing funds for a student to make an independent study of the results of sterilization. McGowan suggested that such a study would parallel and extend the material on negative effects contained in the most widely accepted source of statistics on the subject, Paul Popenoe’s pamphlets “Eugenic Sterilization in California” (later to be collected and published as *Sterilization for*

56. Ryan, *Human Sterilization*, foreword, 5.

57. Burke memo to self, 30 October 1928, and Burke to Ward, 24 January 1929, NCWC Papers (Collection 121).

Human Betterment in 1929). McGowan's proposal highlights the relative lack of information available that was critical of sterilization. The obvious reason for this imbalance was that most of the people willing to study sterilization were committed to the eugenics agenda, as either administrators of state institutions or private foundations promoting eugenic sterilization.⁵⁸

Given the scarcity of antisterilization material, Patrick Ward consulted with prominent Catholic psychiatrists and social scientists, such as Thomas Verner Moore, John Montgomery Cooper, and the ubiquitous John Ryan. These men suggested that rather than producing a piece on the yet ill-defined "evil results" of sterilization, the NCWC should produce two pieces, one that dealt with the Catholic position on sterilization and another one that addressed medical issues. Since the Vatican had not yet given definitive instructions on the issue of sterilization, Ryan would address the questions raised by sterilization from a more generally secular point of view. This argument had the advantage of being one that lay Catholics could communicate easily to non-Catholic neighbors and legislators without appearing to impose their religious sensibilities on the general public.⁵⁹ Because Ward could not locate a Catholic psychiatrist with institutional experience to author the pamphlet on medical issues, he turned to Dr. Charles Bernstein, the well-respected superintendent of the colony for feeble-minded at Rome, N.Y. Strongly opposed to sterilization, Bernstein seemed to be an excellent choice, not the least because he was Jewish. Ward reported to Burke that Moore thought "that a pamphlet by him would be most effective coming from a non-Catholic."⁶⁰

In 1930 the National Catholic Welfare Conference succeeded in publishing four pamphlets on sterilization in a series entitled "Problems of Mental Deficiency." In a sense the series represents an expansion of the plan for opposing sterilization statutes that Dolle and Burke developed in the NCCM "Information Bulletin," since the four pamphlets covered the key material of that initial piece, albeit in more depth and with more direct expertise. The first pamphlet, *Inheritance of Mental Defect*, was written by Dr. Ulrich A. Hauber, a professor of biology at St. Ambrose College in Davenport, Iowa. Hauber's text reviewed the current state of biology while attempting to balance the roles of heredity and environment in explaining mental defects. The biologist took care to describe the complications of multiple factors in

58. Raymond A. McGowan to Burke, 18 February 1929, NCWC Papers (Collection 121D).

59. Ward to Burke, re: "EVIL RESULTS OF STERILIZATION," 5 April 1929, NCWC Papers (Collection 121D).

60. *Ibid.*

Mendelian genetics and the differences between hereditary, prenatal, and environmental causes for defects. The result was a picture of a very complex situation that could not be dealt with by simplistic plans for mass sterilizations.⁶¹ Bernstein's pamphlet, *Social Care of the Mentally Deficient*, presented the logical outgrowth of Hauber's piece: persons with mental deficiency needed to be treated with adequate care and attention in order to allow them the best chance to take advantage of their strengths. Bernstein advocated a colony system where children and young adults were educated and trained for productive work so that they eventually could be employed at agricultural, domestic, or industrial tasks.⁶² Despite Bernstein's plea for education and vocational training for persons judged to be mentally deficient, William Montavon's review of the legal state of sterilization statutes in 1930, which was the third pamphlet, proved that such laws were becoming increasingly more popular with state legislators, especially after the Supreme Court affirmed the constitutionality of the 1924 Virginia law.⁶³ Finally, Ryan drafted the piece on the moral issues associated with sterilization.

The four pamphlets in the series included study guides and bibliographies so that they could be used in parish study clubs. Encouraged and organized by local chapters of the Council of Catholic Women and various fraternal organizations, study clubs helped to ensure that the adult lay population was well versed in the principles and reasoning of the church's theological, moral, and social teaching. The study clubs received enthusiastic support from local dioceses, with one Catholic newspaper remarking, "Who should be a student of Catholic affairs or a Catholic student? Our answer would be anyone who is interested in the progress of the Faith; the victory of good over evil; the welfare of society, in other words, anyone who is not entirely self-centered and selfish." Composed of not more than twenty persons, the clubs provided a forum for parishioners to read, study, and discuss materials provided by the NCWC on issues such as the Mass, Catholic education and history, social service, rural issues, and immigration.⁶⁴

With the "Problems of Mental Deficiency" series already in the works, on December 31, 1930 Pope Pius XI issued an encyclical that

61. Ulrich A. Hauber, *Inheritance of Mental Defect* (Washington, D.C.: National Catholic Welfare Conference, 1930).
62. Charles Bernstein, M.D., *Social Care of the Mentally Deficient* (Washington, D.C.: National Catholic Welfare Conference, 1930).
63. William F. Montavon, *Eugenic Sterilization in the Laws of the States* (Washington, D.C.: National Catholic Welfare Conference, 1930).
64. "Study Clubs are Urged by D.C.C.W.," *Catholic Universe Bulletin* (June 21, 1929): 8, and "Why Study Clubs?" *Catholic Universe Bulletin* (August 8, 1930): 12.

granted the NCWC's work on the sterilization question the weight of papal sanction. Although *Casti Connubii* is more widely known for its condemnation of the use of artificial contraceptives, in four short paragraphs the Holy Father provided an authoritative pronouncement about eugenics and sterilization that served as a reaffirmation of the opposition that Catholics in the U.S. were voicing against eugenics policy initiatives.⁶⁵ With regard to the increased number and popularity of sterilization statutes, the encyclical states: "Public magistrates have no direct power over the bodies of their subjects; therefore, where no crime has taken place and there is no cause present for grave punishment, they can never directly harm, or tamper with the integrity of the body, either for the reasons of eugenics or for any other reason."⁶⁶ The Pope's words meant that Catholics could voice publicly their rejection of the eugenics social ideology knowing that they had the full weight of the Vatican behind them. Though they would continue to argue against legislative measures based on their understanding of science and American political traditions, they could be confident that their position was founded on explicit Catholic moral teaching.

Even though John A. Ryan's contribution to the "Problems of Mental Deficiency" series had been planned well before Pope Pius XI issued *Casti Connubii*, Ryan reworked his text, *Moral Aspects of Sterilization*, to include the Holy Father's teaching on the subject. In reviewing the work of previous moral theologians, Ryan admitted that there had been a considerable difference of opinion over whether sterilization was intrinsically immoral or simply an unwarranted practice given the contemporary social situation. However, Ryan reminded his readers that, given the Pope's authoritative declaration, such difference of opinion could no longer be sustained. In addition to discussing the teaching of the encyclical, Ryan took a considerable degree of care in refuting some of the practical elements of eugenic rhetoric. He argued that popular figures estimating the number of feeble-minded persons and their potential danger to society had been inflated greatly, and that sterilization posed significant dangers of its own. Also, Ryan was concerned particularly with the scope of sterilization laws and their potential to include categories of the population whose

65. *Casti Connubii's* treatment of eugenics was based on the work of German Jesuit Francis Hurth and was a response to the eugenics ideologies being popularized in the United States and Western Europe during the early decades of the twentieth century. See John T. Noonan, *Contraception: a History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge, Mass.: Harvard University Press, 1965), 511–12.

66. *Casti Connubii*, paragraph 71. "Casti Connubii: Encyclical of Pope Pius XI On Christian Marriage, December 31, 1930, 208," in *The Papal Encyclicals, 1903–1939*, ed. Claudia Carlen (Raleigh, N.C.: Pierian, 1990), 391–414. Quote from 402.

behavior had nothing to do with heredity. Finally, Ryan cited several opinions that argued that sterilization was an ineffective method to deal with mental deficiency. In support of this position, Ryan quoted a passionate passage by Herbert Spencer Jennings that argued that poor environmental conditions produced effects similar to those thought to have hereditary origins. "In view of the foregoing facts, particularly the Papal condemnation," Ryan summarized, "it is clear that no Catholic is morally justified in promoting either the enactment or the execution of sterilization laws. This applies to private citizens as well as to public officials and public employes [sic], but especially to legislators, physicians, and surgeons."⁶⁷

The publication of the "Problems of Mental Deficiency" series gave Burke and the individuals at the NCWC a significant tool in their efforts to arm U.S. Catholics to fight the eugenic sterilization movement. Instead of Catholics having to cobble together a bibliography of disparate clinical studies and moral treatises, the pamphlets consolidated and summarized that material, allowing the laity easy access to a multifaceted argument against sterilization. Contradicting the medical, legal, and social underpinnings of the eugenic sterilization movement, Catholic authors had developed a set of objections that honored their understanding of natural rights and served their unique position as a minority population within a religiously pluralist nation. Thus, the medical and scientific objections appealed to rigorous scientific method and challenged the cultural assumptions inherent in eugenic rhetoric. By enlisting a non-Catholic author for one of these pamphlets, the NCWC helped to inoculate the Catholic spokespersons from xenophobic accusations that their objections to the eugenics movement were the isolated response of a population outside the American mainstream. While presenting secular arguments against eugenics was important, the Catholic thinkers never abandoned their concern for the moral issues involved in the sterilization question. Pius XI's encyclical served as an affirmation of the already well-developed efforts of Catholic clergy and laity in the United States to reject eugenic sterilization as scientifically unsound and morally offensive social policy. This broad-based response to the eugenics movement provided a stable platform from which Catholic thinkers would continue to combat eugenic rhetoric and sterilization statutes within the context of American democratic traditions during the 1930s and the 1940s.

67. John A. Ryan, *Moral Aspects of Sterilization* (Washington, D.C.: National Catholic Welfare Conference, 1930), 6, 21–22.