

A SHARED HISTORY OF SHAME: SWEDEN'S FOUR-DECADE POLICY OF FORCED STERILIZATION AND THE EUGENICS MOVEMENT IN THE UNITED STATES

I. INTRODUCTION

Each society has its own values and models of desirable behavior. The multiplication of socially incompetent and mentally deficient people, coupled with the corresponding diminution of the superior classes of society¹ has, in the eyes of some, had a detrimental effect on social classes around the world. Frenzied and over-zealous eugenicists in Sweden and the United States attempted to warn humanity of what they saw as its impending self-destruction in the early part of the twentieth century, and now Sweden is faced with the hard truth of compensating victims of the resultant eugenics movement and compulsory sterilization.

In the early part of the twentieth century, eugenics was considered the science of human betterment.² With the emergence of highly technological and economically competitive societies, great value was placed on academic success and intelligence, and "persons whose intellectual skills are obviously less developed than the norm have traditionally been devalued and treated as deviants."³ It was from an underlying belief in the ability to improve the human race that compulsory sterilization and the eugenics movement emerged.

Coercive,⁴ compulsory, or involuntary sterilization involved the

1. J.H. LANDMAN, *HUMAN STERILIZATION: THE HISTORY OF THE SEXUAL STERILIZATION MOVEMENT* 4 (1932).

2. *Id.* at 3. "It [eugenics] is concerned with the study of being well born and with all the social agencies which may improve or impair, physically and mentally, the racial qualities of future generations . . . Its purpose is to discover how we may breed better human beings." *Id.*

3. RUTH MACKLIN & WILLARD GAYLIN, *MENTAL RETARDATION AND STERILIZATION: A PROBLEM OF COMPETENCY AND PATERNALISM* XIX (1981).

4. According to one author,

[c]oercive sterilization usually involves one or more of the following:

- 1) deception (sterilization during the course of another medical operation, or telling the victim that the operation is for appendicitis or some other medical condition);
- 2) undue pressure (offering sterilization as a condition of parole or release from an institution);
- 3) threats (withdrawal of social benefits);
- 4) violation of the principle of informed consent (sterilizing persons such as minors or the mentally retarded who cannot give a legal informed consent);
- 5) lying about the procedure (telling the victim that it is reversible);
- 6) failing to explain the procedure fully or in a language the patient understands;
- 7) pressing it upon someone who has not voluntarily sought it.

STEPHEN TROMBLEY, *THE RIGHT TO REPRODUCE: A HISTORY OF COERCIVE STERILIZATION*

sterilization of mentally incompetent persons "upon the request of a parent or guardian, superintendent or other official of a public institution or a psychiatrist."⁵ This note compares the twentieth century compulsory sterilization practices of the United States and Sweden, the result of which has been a trail of survivors now seeking help from the governments that had promised protection. Part II begins by examining the recent outcry from 20,000 living victims of compulsory sterilization in Sweden and the state of political affairs after the government, on August 27, 1997, promised to launch a full investigation into the policies and procedures of forced sterilization and to explore possible compensatory measures. This section then examines the history behind sterilization in Sweden, the underlying force of the eugenics movement throughout the twentieth century, and the movement to repeal the Swedish sterilization laws in the late 1970s. Part III examines the American eugenics movement through history and notes the irony of sterilization in a land where all men are supposedly created equal. This section also inspects court decisions involving the sterilization of the mentally incompetent, the sterilization of "hereditary" criminals, the American efforts to keep the Aryan/white race pure, and the recent repeal of sterilization statutes in the United States. Part IV points out the gross violation of human rights that the eugenics movements and compulsory sterilization programs effected in the United States and Sweden. This section also offers suggestions for Sweden to consider in establishing a solid compensation scheme. Although Sweden has received much criticism from the United States, the latter is not completely free of blame. The United States has not established a systematic and positive means of compensation for its victims of compulsory sterilization. Finally, Part V concludes by noting the pressing concerns about fertility control in both countries. Both societies must face their grim experiences with the practice of eugenics and search for measures to prevent such practices from re-emerging in the future.

II. SWEDEN

In the early part of the twentieth century, Swedish victims of sterilization were perceived to be lesser human beings, flawed by

1 (1988).

5. IRVING J. SLOAN, *THE LAW GOVERNING ABORTION, CONTRACEPTION & STERILIZATION* 42 (1988). "The most common surgical method for accomplishing voluntary sterilization of men is vasectomy, which is the surgical excision and/or ligation (tying off) of a portion of each vas deferens (the excretory ducts of the testes)." *Id.* at 37. For more information on vasectomies, see *infra* note 95. "The most common surgical method for accomplishing voluntary sterilization of women is tubal sterilization, which is the surgical excision, occlusion and/or ligation of portions of the oviducts, or fallopian tubes." See SLOAN, *supra* at 37.

unacceptable mental, social, and socioeconomic characteristics; many were said to suffer from “genetic inferiority.”⁶ “To prevent this genetic heritage from being passed on, they were sterilized—sometimes involuntarily.”⁷ *Dagens Nyheter*⁸ revealed that Swedish citizens were subject to involuntary sterilization from the 1930s to 1976 on the grounds of having undesirable racial characteristics or otherwise “inferior” qualities, such as very poor eyesight,⁹ mental retardation,¹⁰ or an “unhealthy sexual appetite,”¹¹ as described by authorities at the time.¹²

6. “Genetic inferiority” is considered to be a malfunctioning of many human traits; such as “poor or mixed racial quality[.]” . . . poor families or not of the common Nordic blood stock.” *Europe’s Taboo, Sterilization, Out of the Shadows*, CHI. TRIB., Aug. 28, 1997, available in 1997 WL 3582897 [hereinafter *Europe’s Taboo*].

7. Jim Heintz, *Sweden in Self Examination of its Sterilization of Thousands*, ORANGE COUNTY REG. (Cal.), Aug. 26, 1997, at A16, available in 1997 WL 7440163.

8. *Dagens Nyheter* is a Swedish newspaper. Barbara Amiel, *Sweden’s Shameful Eugenics Policies*, MACLEAN’S, Sept. 8, 1997, at 13, available in 1997 WL 8474073.

9. “In 1943, at age 17, [Maria] Nordin had her ovaries removed on the instructions of the headmistress and consulting physician at a reform school for girls.” Dean E. Murphy, *Publicity Over Sterilization Program Spurs a Now-Repentant Nation to Make Amends to 20,000 Surviving Victims*, L.A. TIMES, Aug. 31, 1997 [hereinafter *Publicity*]. At that time, Nordin was “said to suffer from ‘genetic inferiority’ that, in the interest of the Swedish welfare state, was best not passed on to offspring.” *Id.* In an interview with National Public Radio (NPR), the director of the Swedish Social Welfare Board, Karl Grunwald, stated: “The case of Maria Nordin is a sad example. As a child, Nordin fell way behind in school. The assumption was made she had sub-normal intelligence. In fact, she was nearsighted, but had no glasses and couldn’t see the blackboard.” *All Things Considered* (National Public Radio broadcast, Aug. 25, 1997), available in 1997 WL 12833288 [hereinafter *All Things Considered*]. No one bothered to check her eyes. Instead her “school doctor classified her as ‘feble-minded’ and ‘unable to raise children.’” *See Publicity, supra*.

I’ll never forget when I was called into the headmistress’s office . . . I was aware of it well before. I hid in the basement bathroom crying all by myself.

I was thinking of killing myself, and I have been thinking of it ever since. But

I never wanted to give [the government] the satisfaction of getting rid of me.

Id. (quoting Maria Nordin’s agonizing disclosure of being one of the thousands of victims of forced sterilization).

10. In the early part of the twentieth century in Sweden, mental retardation was said to exist if the person could be compared intellectually with a person twelve years old or younger. EUGENICS AND THE WELFARE STATE: STERILIZATION POLICY IN DENMARK, SWEDEN, NORWAY, AND FINLAND 115 (Gunnar Broberg & Nils Roll-Hansen eds., 1996) [hereinafter *WELFARE STATE*]. For an in-depth discussion on various definitions of mental retardation, see MACKLIN & GAYLIN, *supra* note 3.

11. “Among those sterilized were unmarried mothers with several children, people judged to be habitual criminals, and even a boy considered ‘sexually precocious.’” Jim Heintz, *Sweden Regrets its Eugenic Past*, GUARDIAN (London), Aug. 26, 1997, at 7, available in 1997 WL 2398018 [hereinafter *Eugenic Past*]. The sexually precocious were victims of sterilization because their sex drive was considered to be inferior. *Id.*

12. *Id.*

A. *Current State of Affairs in Sweden*

I had a dream of a home of my own, and of having my own children. Nobody said anything about sterilization. I knew, though, and said I didn't want it. I led an ordinary life after that. I applied for damages from the government last year, but that has been denied because the institution had only followed the law. I'm angry and bitter and sad. I'm trying to forget, but it will not work.¹³

This desperate cry for government relief by Maria Nordin, a victim of forced sterilization during the 1940s, is not a lone voice reproaching the cold conscience of Sweden.¹⁴ Sweden must now face the chilling realization that it is time for its government to review a painful chapter of its own history.

On August 26, 1997, the Swedish government promised a full investigation into involuntary and coercive sterilization measures. Approximately 63,000 people¹⁵ were sterilized under Sweden's policy of eugenics which began in 1935 and came to a quiet close in 1976,¹⁶ when the law was silently dropped from the books.

The investigation resulted from unwelcome publicity generated when Majcie Zarembas¹⁷ wrote several highly publicized articles on the sterilization laws and the recent denial of a compensation claim by the Swedish government.¹⁸ Social Welfare Minister Margot Wallstrom,¹⁹ who

13. *All Things Considered*, *supra* note 9 (quoting Maria Nordin speaking of her desperate application to receive compensation from the government).

14. Another unnamed girl was doomed to the horrid punishment of sterilization for running away as a teen. "I ran away from the [youth] home. I kept running away and they thought I might have children. I mean, imagine, children just like us. They must have thought I was dangerous." Ben Fenton, *The Gulag Archipelago for Children in Sweden is Recoiling from the Shock that 63,000 People were Forcibly Sterilised by One of the Most Liberal Countries in the World*, DAILY TELEGRAPH (London), Aug. 29, 1997, available in 1997 WL 2334741 [hereinafter *Gulag Archipelago*]. Her doctors thought that she would probably transfer the supposed retardation to her children. *Id.*

15. The actual number of sterilizations between 1935 and 1975, as reported by the Swedish Central Bureau of Statistics, is 62,888. WELFARE STATE, *supra* note 10, at 110.

16. Robert Fox, *Sweden Promises Full Inquiry into Forced Sterilization*, DAILY TELEGRAPH (London), Aug. 27, 1997, available in 1997 WL 2334413 [hereinafter *Full Inquiry*].

17. Majcie Zarembas is currently a journalist in Sweden, though she is of Polish origin. *Gulag Archipelago*, *supra* note 14.

18. *Id.*

19. Wallstrom is the leading spokesperson of Sweden's Social Democrats on the sterilization issue. The government claims that the involuntary sterilizations were not illegal because they were authorized by a law passed by Parliament. *Full Inquiry*, *supra* note 16.

recently highlighted the case involving Maria Nordin, is now preparing to argue for a compensation program before the government.²⁰

Sweden's past sterilization policies have been termed "barbaric."²¹ Wallstrom has indicated that she intends to launch a full investigation into the sterilizations to determine if compensation is necessary; however, a compensation program would require the overturning of a law stating that those sterilized are ineligible for compensation because the procedure was done legally.²² Her announcement came only hours after Sweden's most "influential opposition politician," Carl Bildt, demanded that the government begin a probing investigation into the sterilization scandal.²³ Nevertheless, the governmental inquiry is rapidly evolving into a mere political debate with little real concern for the actual victims and their families.²⁴

The sterilization program stemmed from the pursuit of eugenics, a once popular movement seeking to improve humanity by controlling genetic factors. It is important to note that Sweden's sterilization laws were not overturned until 1976, more than thirty years after Nazi Germany's brutal human engineering policies collapsed with the fall of the Third Reich.²⁵ Wallstrom expressed the fear that a similar practice might again gain a foothold in Sweden since "[w]e know [there are] neo-Nazis in Sweden and that the manipulation of genes could take a wrong road if . . . [Swedes] are not careful."²⁶ It is doubtful that the Swedish government can duck responsibility by claiming that sterilization laws were legal because they

20. *Swedish to Consider Compensation for Forced Sterilisations*, AGENCE FRANCE-PRESSE, Aug. 24, 1997, available in 1997 WL 13382604 [hereinafter *Consider Compensation*].

21. *Sweden Sterilized "Inferior" Racial Types, Reporter Reveals*, CHI. TRIB., Aug. 25, 1997, available in 1997 WL 3581891 [hereinafter *Racial Types*]. Arne Ruth, editor-in-chief of *Dagens Nyheter*, called the sterilization policies, "barbarism on an incredible scale." *Wired from Sweden*, 33 INTERNET EDITION 2 (last modified Sept. 8, 1997) <<http://www.si.se/wired33.html>> [hereinafter *Wired from Sweden*].

22. *Sweden Bildt/Sterilization-2: Pressure from Within the Government*, DOW JONES INT'L NEWS, Aug. 26, 1997 [hereinafter *Sweden Bildt*]. See *infra* Part IV.A and B for a more complete look into the political pressure from the Swedish governmental parties.

23. *Government to Probe Sterilization Scandal*, CHI. TRIB., Aug. 27, 1997, available in 1997 WL 3582458 [hereinafter *Government Probe*]. Bildt is the leader of Sweden's opposition conservatives, known as the Moderates. Jim Heintz, *Sweden Agrees to Investigate Forced Sterilizations*, ASSOCIATED PRESS, Aug. 26, 1997, available in 1997 WL 4881073 [hereinafter *Investigate*]. "Swedish society risks being injured if we do not make a serious, thorough and non-partisan probe of this period in Swedish history," said Bildt in a letter to Prime Minister Goeran Persson. *Id.*

24. For an in-depth discussion of the political debate in Sweden, see *infra* Part IV.B.

25. *Investigate*, *supra* note 23.

26. Wallstrom also warned the press that "there was a risk 'an elite' might emerge who thought they could 'improve human material through sophisticated genetic manipulation.'" *Consider Compensation*, *supra* note 20.

were passed into law by Parliament,²⁷ and at the same time avoid awarding large compensation packages to those who fell victim to the influential Social Democrats who attempted to cleanse Swedish society of gypsy features, psychopathy, and vagabond lifestyles.²⁸

B. *The Eugenics Movement in Sweden and the Institutionalization of Race Biology*

In the early days of the eugenics movement in Sweden, the notion of a distinct Nordic race²⁹ was established, linking both genetic and medical concepts.³⁰ Sweden embraced the eugenics movement, particularly sterilization, with great fervor. It was among the first of the Nordic countries³¹ to implement forced sterilization and to create an image of the model Swedish citizen. The eugenics movement was in full force throughout the world at the turn of the century, but there was a fatal flaw in the way it was carried out in Sweden. The "mentally handicapped" were not all sterilized for genetic reasons; they were often sterilized as a result of social reasons. The low IQs that prompted sterilization were often the result of people being raised in poor families or being understimulated as children, rather than the result of genetic abnormality.³²

Eugenics and sterilization were increasingly being touted as the salvation for the nation. One psychiatrist, Herman Lundborg, preached eugenics and stressed that "heredity is everything."³³ Lundborg described what he perceived to be a threat to the Swedish population: "a host of . . . poorly equipped individuals come into being, and they will soon make their will known, especially in periods of unrest or unemployment."³⁴ It is not

27. *Full Inquiry*, *supra* note 16.

28. *Eugenic Past*, *supra* note 11.

29. The Nordic race stemmed from the classic Viking history and Gothic traditions in Sweden. WELFARE STATE, *supra* note 10, at 81.

30. *Id.* at 83. In 1909, the Swedish Society for Racial Hygiene was formed in Stockholm predominantly by the medical profession to influence public opinion and establish funding for the sweeping eugenics movement. *Id.* at 83-84.

31. Sweden was not the only participant in the eugenics movement in Scandinavia in the early 1930s; Norway, Denmark, and Finland "all put the theory of selective breeding and forced sterilisation into practice." *Full Inquiry*, *supra* note 16. In Denmark and Sweden, compulsory sterilization laws have been in effect since before World War I. Neither law was voluntary, and the victims were not required to give consent. TROMBLEY, *supra* note 4, at 159. Sweden, Norway, and Denmark all explored "racial-cleansing 'sciences' after World War I." *Racial Types*, *supra* note 21.

32. *All Things Considered*, *supra* note 9.

33. Herman Lundborg was a prominent eugenics scientist in the years preceding World War I and took the stance that eugenics and hygienics were becoming something of a religion in certain scientific circles. WELFARE STATE, *supra* note 10, at 84.

34. *Id.* at 85.

surprising, then, with this influx of fear and prejudice, that genetic inferiority was perceived to doom mankind to destruction. During the early 1920s, a race biology scare ran rampant through universities and the Parliament.³⁵ Conservatives on the right and Social Democrats on the left—with Lundborg leading the pack—joined forces in 1921 to pass a bill creating the first state institute of race biology in the world.³⁶ At the forefront of the eugenics movement, then, were elected officials and representatives with authority vested in them by the Swedish people and ratified by the king. Still, “[a]ll Swedes . . . bore a share of the blame for the sterilisations because all parties had acquiesced in the laws and their implementation.”³⁷ An act of Parliament in 1922 provided for the creation of a Swedish eugenics institution, thereby lending a degree of legitimacy to the nation’s sterilization procedures. The Swedish Institute for Race Biology has been coined the “highwater mark of the eugenics movement in Sweden.”³⁸ The debate surrounding the institution was vigorous in the Parliament, but the advocates’ strong voices for passing the bill reflected the sentiment of the country. A popular Social Democrat of the era stated, “[w]e are lucky to have a race which is as yet fairly unspoiled, . . . a race which is the bearer of very high and very good qualities.”³⁹ However, neither the Parliament nor any of the advocates for the bill took a positive stance on what those particular “unblemished” qualities were.

The implementation of the Swedish Institute was not only the springboard for the establishment of sterilization in Sweden, but also the creation of an international trend.⁴⁰ One Swedish historian maintained that the idea of sterilizing the least advantaged members of society took root not only in the minds of Swedish doctors, but also in the rest of the world.⁴¹ “Although eugenics had been advocated in many countries, Sweden was the

35. *Id.* at 85-88. Author Jan Myrdahl disclosed that the idea of sterilizing the “dregs of society” took hold in some Swedish universities and throughout the Parliament at the turn of the century. *Consider Compensation*, *supra* note 20.

36. WELFARE STATE, *supra* note 10, at 86-87. The bill pointed to the value of Swedish stock, and the institute was to be utilized for human plant breeding to preserve the Aryan genetic value. *Id.* at 86.

37. Carl Bildt, speaking on the shared concern over sterilization in the current state of moral revelation in Sweden. *Wired from Sweden*, *supra* note 21.

38. WELFARE STATE, *supra* note 10, at 88.

39. *Id.* at 87 (statement of Arthur Engberg, the future Minister of Education and Ecclesiastical Affairs for the Social Democrats). Engberg also found it “odd that while we are so very particular about registering the pedigree of our dogs and horses, we are not at all particular when it comes to preserve our own Swedish stock.” *Id.*

40. Several other institutes, concentrating on eugenics research and anthropological science, were proposed for establishment in Africa, Central America, France, the United States, and Germany. *Id.* at 89-90.

41. *Consider Compensation*, *supra* note 20 (citing Swedish historian Alf Johansson’s remarks).

first in the world to 'grant this pseudo-science official recognition.'⁴² Germany embraced the concept and followed the Swedish example by establishing the Berlin Institute for Racial Hygiene, an organization which would eventually contribute to the Nazi race ideology.⁴³ But it was not until 1933, after the race-based genetic experiments in Germany, that the Swedish Institute fell upon financial hardship. Still, as a result of enlarged public attention through lectures and publications, there was a hastened demand for sterilization.⁴⁴ Finally, the Swedish Institute was put on sound footing after vigorous fundraising and efforts by some members of the Parliament.⁴⁵ By this time, the concept of human engineering and race biology was well established in Sweden.

1. *The Beginning in Marriage*

Sterilization evolved slowly from the eugenics movement in Sweden. A close look at the marriage laws paints a clear picture of this evolution. Marriage laws instituted in 1915⁴⁶ prohibited the mentally retarded and those diagnosed or suffering from a mental illness or epilepsy from lawfully marrying. These laws purported to prevent both the transmission of these proclaimed hereditary diseases to progeny and the propagation of weak genes.⁴⁷ When compared to these undeniably restrictive laws, sterilization was seen as a more humane alternative and thus garnered increasing acceptance.⁴⁸ Eventually, the general principles of race hygiene were enthusiastically embraced, and the 1920s paved the way for eugenic sterilization.

42. *Eugenic Past*, *supra* note 11 (quoting the *Dagens Nyheter* comments on the establishment of an institute for racial biology in 1921).

43. WELFARE STATE, *supra* note 10, at 90. For a discussion on the Berlin Institute for Racial Hygiene, see ROBERT JAY LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* 349, 357, 360-61, 369 (1986).

44. WELFARE STATE, *supra* note 10, at 88-89. In 1926, *The Racial Character of the Swedish Nation* was published and drew a great deal of attention to the study of genetics throughout Sweden and the international community. Several reprints were issued in illustrated form (*Svensk Raskunskap*), in the German language (*Rassenkunde des schwedischen Volkes*), and in a copy which was used solely for photographic explanation. *Id.*

45. *Id.* at 91. Alfred Petren and Nils Wohlin, members of Parliament, made several attempts to raise money for the Institute. *Id.*

46. *Id.* at 100.

47. *Wired from Sweden*, *supra* note 21.

48. Elis Essen-Moller, professor of medicine, described sterilization as a relief from mental institutions: "[I]t appears to me incomprehensible that sterilization can be designated as brutal." WELFARE STATE, *supra* note 10, at 100.

2. *Victims and Implementation*

The research conducted by Lundborg and his advocates for the Swedish Institute eventually paid off for the eugenics movement. The first proposal for a sterilization law was introduced by the Social Democrats who argued for systematic sterilization of the mentally retarded. The necessity of government action “[t]o keep the human race in good order, and to improve it, [was] naturally of considerable interest to the state.”⁴⁹ A commission was established to investigate the issue, but the issue was not put to a vote. Not until 1934, when the Social Democrats put forth a bill proposing the sterilization of anyone suffering from “deranged mentality,” did the final proposal find its way to the Parliament.⁵⁰ The bill stated that a private interview—without any observation of legal formality—could be used to aid the mentally retarded in overcoming any reluctance and accepting sterilization. Coercion had become the norm: “Persuading a patient to accept sterilization was thus the method recommended by the government.”⁵¹ The bill was passed, and Sweden’s Sterilization Act went into force on January 1, 1935.⁵² There was no need for the victim to consent, no required court hearing, and no eugenic board to oversee the program. “Sterilization without the consent of the patient was now permitted in cases of mental illness, feeble-mindedness, or other mental defects.”⁵³

Sterilization was ordinarily justified by social and eugenic considerations. From the social perspective, a prerequisite for sterilization was the person’s inability to properly care for children; from the eugenics perspective, if a person’s genes were thought likely to transmit mental illness, then the person would inevitably fall victim to sterilization.⁵⁴ From a modern, progressive perspective, the Swedish policy is appalling because the sterilizations were not restricted to hardened criminals or to severely mentally retarded people already confined to institutions.

Seemingly, just about anyone in a position of authority could authorize sterilization procedures. Doctors, judges, and school headmistresses were all entitled to great power in the enforcement of sterilization laws.⁵⁵

49. *Id.* at 101. Psychiatrist Alfred Petren was an advocate for the bill and believed legislation should be restricted to determine when an operation for sterilization would be permissible. “I know of no country where there has been so close a relation between research and application as in Sweden.” *Id.* at 95-96.

50. TROMBLEY, *supra* note 4, at 159.

51. WELFARE STATE, *supra* note 10, at 102.

52. *Id.*

53. *Id.* at 103.

54. *Id.*

55. “If an operation concerned a mentally retarded patient, two physicians could jointly decide to enforce sterilization of the patient.” *Id.* “After the sterilization law was broadened in 1941, the right to decide the fate of a victim was given to several groups of physicians

Dissatisfied with this broad authority, some leading physicians felt that sterilization was a matter only for the skilled judgment of the medical community, not for jurists or politicians. According to Karl Grunwald, Director of the Social Welfare Board, “[w]e had in the '30s about 150,000 mentally handicapped, as we today have less than 40,000. So you must understand that ‘mentally handicapped’ was a very large group in our society, and it was a threat against the welfare state.”⁵⁶

The legislation that was passed was in line with this philosophy. The 1934 Sterilization Act “was extended in 1941 to include those whose ‘social behavior’ might make them an unfit parent.”⁵⁷ In addition to individuals suffering from mental illness or retardation, persons suffering from physical disease, defects of a hereditary nature, or any “anti-social way of life” were also subject to sterilization.⁵⁸ Sweden acted swiftly in implementing these laws. Between 1935 and 1941, sterilizations were performed at an average of 481 each year.⁵⁹ By 1941, the number exploded to 1164 and steadily climbed to an astounding 2351 compulsory sterilizations performed in 1949.⁶⁰ In the mid-1940s, over ninety percent of compulsory sterilizations were performed on women; in the 1970s, women constituted ninety-nine percent of all sterilizations.⁶¹ There were no precise grounds on which the sterilizations were performed. Statistics from the Swedish Board of Health show that both eugenic and social indications gave rise to recommendations for sterilizations.⁶² It becomes difficult to establish grounds for compensation due to compulsory sterilization when there is little knowledge or documentation as to the specific reasons behind the sterilization of certain individuals.

Research has suggested mental retardation was the primary consideration in the sterilization process: if there was at least a ten percent likelihood that the mental disease or defect could be passed on to progeny, the person was sterilized.⁶³ In some cases, such as those involving deaf-mutism or schizophrenia, for which the risk of inheritance was determined to be under one and one-half percent, persons inflicted with these diseases

employed by the state, in addition to parents, guardians, physicians, superintendents of institutions, poor law boards and child welfare committees.” *Id.* at 116.

56. *All Things Considered*, *supra* note 9 (quoting the director of the Social Welfare Board).

57. TROMBLEY, *supra* note 4, at 159.

58. WELFARE STATE, *supra* note 10, at 108.

59. TROMBLEY, *supra* note 4, at 160.

60. WELFARE STATE, *supra* note 10, at 108. The number of operations in 1940 was 0.9 per 10,000; 3.3 per 10,000 in 1950; and 2.2 per 10,000 in 1960. *Id.* at 109.

61. *Id.* at 109-10.

62. *Id.* at 110.

63. *Id.* at 111.

were sterilized nevertheless.⁶⁴ Epileptics were simply prohibited from marrying unless they submitted to sterilization or were infertile.⁶⁵

However, many victims of sterilization were not inflicted with mental disease or retardation. Unlike many of his friends, Strue Johannesson was spared from “the chop.”⁶⁶ Johannesson was part of a race-biology experiment and lived in an institute for neglected children⁶⁷ where half of the boys were victims of sterilization. At the time, Johannesson and several others felt that the boys who were allowed to leave the institute were privileged:

We spent all our days behind a two-metre fence, never allowed out. When this boy went out, we all envied him because he got to see the outside world [E]ven more so when he came back and he wasn't made to have cold showers in the morning for the next five days. Then, when we did shower with him, we saw he had what became known as a ‘cut in the crutch.’⁶⁸

These victims were casualties of a program that flourished in Sweden and several other countries. A young woman, Astrid, was one of the many victims who referred to this era as a “slaughter,” never revealing it to society.⁶⁹ According to Johannesson, “[m]ost of my friends from the institution died young, in their '40s. I think some of them were broken by the operations.”⁷⁰

3. *Compulsory v. Voluntary: Is There Really a Difference?*

All but the earliest sterilizations were required to be voluntary. Both the 1934 Sterilization Act and the extension of that statute in 1941 were

64. *Id.*

65. *Id.*

66. Synonymous with a vasectomy, “the chop” was a phrase coined by young children of the Robyland Institute for Mised and Morally Neglected Children and was alternatively deemed a “cut in the crutch.” *Gulag Archipelago*, *supra* note 14. Johannesson believes he was spared from “the chop” because he had blue eyes and stereotypical Nordic features. *Id.*

67. The institute was the Robyland Institute for Mised and Morally Neglected Children where Johannesson was sent after he was orphaned and ran away from a foster home in 1943. Johannesson would later describe the Robyland Institute as a concentration camp. The institute housed 22 inmates, all of whom were the subject of chemical experiments designed to keep them tranquil. *Id.*

68. *Id.* Johannesson is not so envious now that he is a successful artist and his first grandchild is due in 1998. *Id.*

69. Astrid, now 68, says her father refused consent, but the government sterilized her anyway: “They sent me there in a taxi and gave me three oranges. I was in for a week, I think.” *Id.*

70. *Id.*

based on voluntary measures. Those persons considered legally competent could not be sterilized without their consent. That being so, why is it that the knowledge of forty years of *voluntary* sterilization now presents such a problem to progressive thinkers and forms the substance of such a heated debate in Sweden? The answer lies in the fact that coercive and forced sterilizations were performed whenever they were regarded as desirable and in the interest of the state.⁷¹ Still, the government publicly advocated persuasion as opposed to force. Men and women were "persuaded" to agree to sterilization as a condition for release from mental institutions⁷² or group homes,⁷³ or as a condition for marriage.⁷⁴ Frequently, hospitals and other institutions made sterilization a condition for discharge. A study published in 1962 revealed that "some 36 percent (527) of all girls leaving Swedish special schools between 1937 and 1956 were sterilized."⁷⁵ This horrific method of birth control was widely employed. According to the National Board of Social Welfare, "the application of the [1941] law was earlier so that sterilization in several cases was performed although the operation was later shown to have been unnecessary"—the National Board was referring to "especially cases where sterilization on social indication [had] been made a condition for discharge from reform schools or other institutions."⁷⁶

Few victims received explanations or operations to correct the procedure. One victim pleaded for help in an application to the Swedish Board of Health: "I was sterilized there Now I wonder if there is any hope for me, won't you help me to have a child If you help me you have saved a life."⁷⁷ The Swedish Board of Health replied with brief

71. When asked about the question of coercion, one advocate of sterilization commented during a 1942 radio talk show:

Sterilization is such an important operation that the individual should not be allowed to decide the matter for himself. Very many of those who should be sterilized are feeble-minded or mentally ill and are therefore not even able to understand what it is all about Most of the time they would not want an operation at all; nor would they agree to one.

WELFARE STATE, *supra* note 10, at 115.

72. "Victims regarded as having undesirable racial characteristics, congenital handicaps, or other 'inferior' qualities were pressured by doctors or officials to consent to the procedure." *Government Probe*, *supra* note 23.

73. In Maria Nordin's case, sterilization was made a condition of her release from school. *Publicity*, *supra* note 9.

74. For a more complete discussion of marriage and its relationship to sterilization, see *supra* Part II.B.1.

75. WELFARE STATE, *supra* note 10, at 117. In nine out of the twenty-eight schools surveyed in the study, nearly half of the girls were sterilized before they were released. *Id.*

76. *Id.* It is evident that several sterilizations were performed simply in response to the unwarranted fear that these women did not have the ability to adjust to society.

77. *Id.* at 119. In 1948, this young man of 25 pleaded to have his operation reversed in order to bear a child with his fiancée. *Id.*

comments stating that no action would or could be taken.⁷⁸ However, in the mid-1950s, general attitudes toward sterilization of the mentally retarded and as a condition for marriage were slowly beginning to change and there was a rapid decline in the application of the program.⁷⁹

C. *The Repeal of Sterilization Laws*

Attitudes toward eugenics and sterilization changed slowly in Sweden, and the program continued into the 1970s. The fact that laws had been instituted no longer drew much public attention. The policy was a matter of official record, but it was rarely referred to in public life or mentioned in textbooks used in schools or universities.⁸⁰ Finally, in 1967, the National Board of Health admitted⁸¹ that the program of sterilizing patients had been implemented because of an unsubstantiated fear of genetic decline and as a result of attempts at eugenic perfection. A number of studies were published in the 1970s revealing that sterilization was often performed on questionable grounds.⁸² Several reforms were implemented to protect reproductive rights and to improve gender equality. A national policy regarding reproductive health was developed and included: legislation on abortion, contraceptives, and sterilization; provisions for contraceptive services within the public health system; and a comprehensive education program in sexuality, fertility, and gender issues.⁸³ Eventually, in 1976, the 1941 Sterilization Act was repealed, and currently all sterilizations without the consent of the person concerned are prohibited.⁸⁴

III. THE UNITED STATES

Revelations that Sweden forcibly sterilized thousands of its citizens in order to “weed out inferiors” may sound like a dehumanizing practice to some Americans, but the same practice has a long history in the United States.⁸⁵ The fact that sterilization was performed on approximately 63,000

78. *Id.*

79. *Id.*

80. *Full Inquiry*, *supra* note 16. For more information concerning references in schoolbooks, see *Sweden Bildt*, *supra* note 22.

81. At the same time the Board also admitted that “sterilization of the mentally retarded was most often legitimate on social grounds.” WELFARE STATE, *supra* note 10, at 134.

82. *Id.* at 135.

83. *Family Planning in Sweden* (visited Sept. 23, 1997) <<http://www.si.se/english/factsheets/familypl.html>>.

84. The 1976 Sterilization Act prohibits “any authority, representative of society, guardian or other person from putting pressure on an individual to be sterilized.” *Id.* at 2.

85. Gretchen Cook, *Forced Sterilization has Long History in the West*, AGENCE FRANCE-PRESSE, Aug. 26, 1997, available in 1997 WL 13383941.

people in Sweden may shock some Americans, but by the end of 1960 in the United States, eugenic sterilizations were performed on 61,540 persons.⁸⁶ Of these victims, 27,436 were mentally ill; 31,931 were mentally defective; and 2,263 were sterilized for other unknown reasons.⁸⁷ Sweden is not alone in its genetic endeavors, and the rest of the world must take responsibility for its own past actions.⁸⁸

A. *The Eugenics Movement in the United States*

In the United States, "human sterilization originated in unsexing individuals as a form of punishment" for crimes such as prostitution.⁸⁹ Swedish eugenicists were not alone in their quest to cure the epidemic of socially inadequate traits. Several American scientists joined the crusade to improve the human condition through the use of eugenical science.⁹⁰ The

86. HAROLD K. BECKER ET AL., *NEW DIMENSIONS IN CRIMINAL JUSTICE* 139 (1968). The report came from figures determined by the Human Betterment Association. *Id.*

87. *Id.*

88. Hitler was the most famous proponent of sterilization of the mentally and physically handicapped and the leader of efforts to "cleanse society." *Europe's Taboo*, *supra* note 6. Currently in Austria, about 70% of handicapped women are still sterilized, most of them against their will. *Id.* Belgium never had a systematic sterilization program, but recent reports indicate that officials carried out forced sterilizations on women who were not mentally or physically handicapped. *Id.* The Swiss have also been known to eliminate and sterilize people who were not of the Aryan race. *Id.* For further discussions on sterilizations in Switzerland, see *Sterilization Scandal Widens in Switzerland*, ORANGE COUNTY REG. (Cal.), Aug. 29, 1997, available in 1997 WL 744072. Britain has taken the position that sterilizations could be carried out with only informed consent, and court-ordered sterilizations have been "very rare" in that country. *Europe's Taboo*, *supra* note 6. Finland had a smaller forced sterilization program, but prior to World War II "most doctors considered it as a normal medical application." *Id.* See also *11,000 Fins Force-Sterilized, Researchers Say*, ORANGE COUNTY REG. (Cal.), Aug. 31, 1997, available in 1997 WL 7441350. Beijing and Tibet encourage women who have had one child to undergo sterilization, and human rights groups allege that China forces sterilization under its one-child policy. *Europe's Taboo*, *supra* note 6. See also *Scandals Over Sterilization*, MACLEAN'S, Sept. 8, 1997, available in 1997 WL 8474113; Cook, *supra* note 85; Elizabeth Rohrbaugh, *On Our Way to Ten Billion Human Beings: A Comment On Sustainability and Population*, 5 COLO. J. INT'L ENVTL. L. & POL'Y 253 (Winter 1994); and UNITED NATIONS FUND FOR POPULATION ON FERTILITY CONTROL 38 (1979) [hereinafter UNITED NATIONS].

89. LANDMAN, *supra* note 1, at 51. The method for sterilization was usually castration, or elimination of the male testicles. The removal of the ovaries, ovariectomy, received little attention until the beginning of the 19th century. *Id.*

90. "The most notorious American eugenicists, such as Charles Davenport, Harry Laughlin, Francis Galton, and Karl Pearson, all attempted to develop a professional record of human traits categorized as 'healthy' or 'unhealthy,' and 'normal' or 'abnormal.'" Paul A. Lombardo, *Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom*, 13 J. CONTEMP. HEALTH L. & POL'Y 1-4 (Fall 1996). For further research involving the scientific discoveries of Galton, Pearson, and Davenport, see

eugenicists emphasized three major concepts:

1) that social, moral, physical, and mental qualities are transmitted in predictable patterns by the mechanisms of heredity; 2) that the human race can be improved by selective mating; and 3) that the ills of society (disease, crime, poverty, and other social abnormalities) can be eradicated by discouraging, or preventing if necessary, the reproduction of socially deviant individuals.⁹¹

The United States was beginning to perceive a threat from societal ills, and the cure was pioneered in seemingly effective eugenic measures. A variety of political perspectives welcomed the message that societal ills could be cured with science, treating as poison those "socially deviant individuals" who posed such a threat to America's future.

Eugenicists were successful in incorporating their proposals into public health law. Between 1900 and 1970, advocates of eugenics and sterilization "drafted and endorsed nearly one hundred statutes that were adopted by state legislatures."⁹² The majority of this legislation attempted to abolish the transmission of such purportedly inheritable defects as criminal propensity, poverty, and mental disease. The first eugenic sterilization bill in the United States was introduced in 1897 in the Michigan legislature but was not enacted.⁹³ However, by this time, superintendents of institutions were secretly sterilizing some "feeble-minded and idiot inmates" at the Winfield, Kansas State Home for the Feeble-minded,⁹⁴ and at the Indiana State Reformatory.⁹⁵ The operations were all done without legal sanction. This was the beginning of eugenic sterilization in the United States.

TROMBLEY, *supra* note 4, at 15-17, 40-44, 53-55.

91. Lombardo, *supra* note 90, at 3-4. One eugenicist, Laughlin, defined the socially inadequate to include "the feeble-minded, the insane, the criminalistic, the epileptic, the inebriated or the drug addicted, the diseased—regardless of etiology, the blind, the deaf, the deformed, and dependents (an extraordinarily expansive term that embraced orphans, 'ne'er-do-wells,' tramps, the homeless, and paupers)." *Id.* at 3.

92. *Id.* at 1.

93. ABRAHAM MYERSON, M.D. ET AL., *EUGENICAL STERILIZATION, A RE-ORIENTATION OF THE PROBLEM* 4 (1936).

94. "In 1855 the Kansas Territorial Legislature legalized the castration of any black or 'mulatto' convicted of rape, attempted rape or kidnapping of a white woman." TROMBLEY, *supra* note 4, at 49.

95. LANDMAN, *supra* note 1, at 52. H.C. Sharp, the institutional physician who was legally practicing sterilization at the Indiana State Reformatory, made a mark in history by devising a surgical procedure of human sterilization known as a "vasectomy." *Id.* Vasectomy removed many objections to public support of human sterilization policies. "It was not an apparent mutilation and it left the sexual powers, though not the procreative powers, of the subject intact." TROMBLEY, *supra* note 4, at 50.

The first sterilization law was passed in 1907 in Indiana and provided for the prevention of the procreation of "confirmed criminals, idiots, imbeciles and rapists."⁹⁶ In 1909, sterilization laws were introduced in California, Washington, and Connecticut.⁹⁷ Sterilization statutes were rapidly adopted by a number of other states shortly thereafter. A total of twenty-seven states encouraged the sterilization of persons suffering from mental disorders, and the laws in all of these states permitted the sterilization of citizens who were not institutionalized.⁹⁸

Like Sweden, which had established the Swedish Institute for Race Biology,⁹⁹ the United States established an organization to research biologically based social ideologies. "[T]he American Genetic Association was founded in 1913"¹⁰⁰ and began publishing *The Journal of Heredity*.¹⁰¹ Later its editors teamed up to create the Human Betterment Foundation (Foundation).¹⁰² The Foundation was established to ensure that the California law was applied as widely as possible, with the Foundation serving as an "inspiration to wider legislation both in the U.S. and abroad."¹⁰³ The United States Supreme Court affirmed the extensive approval of sterilization as a method of preventing reproduction of the

96. LANDMAN, *supra* note 1, at 54. In 1909, Indiana's governor made it virtually impossible to enforce coercive sterilization "and in 1920 it was declared unconstitutional." MYERSON, *supra* note 93, at 4.

97. California became the leader of American eugenical sterilizations and enthusiasm for sterilization was far more immense in California than in other states. "By 1920 sterilizations in California represented 79 percent of the total number in the United States." TROMBLEY, *supra* note 4, at 51. All inmates of state institutions (including the California Home for Feeble Minded Children) and prisoners convicted twice for any sexual offense, and those convicted three times for any offense who might be construed as being a "sexual or moral" pervert were automatically candidates for sterilization. *Id.* at 51-52. For further reading on California sterilization laws, see BECKER, *supra* note 86, at 160-62 (California's experience with compulsory sterilization).

98. For a complete list of the application of the sterilization laws in each state in the United States, see THE NATIONAL CENTER FOR FAMILY PLANNING SERVICES, U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, PUB. NO. 74-16001, FAMILY PLANNING, CONTRACEPTION, AND VOLUNTARY STERILIZATION: AN ANALYSIS OF LAWS AND POLICIES IN THE UNITED STATES, EACH STATE AND JURISDICTION (1971) [hereinafter ANALYSIS].

99. See *supra* text accompanying notes 37-38.

100. The American Genetic Association was not a new organization but was actually the renamed American Breeders' Association. TROMBLEY, *supra* note 4, at 59.

101. *Id.*

102. *Id.*

103. *Id.* The founders, Paul Popenoe and E.F. Gosney, dismissed the doctrine in the Declaration of Independence that all men are created equal as too sentimental. Popenoe argued that reproduction was not an inalienable right and that "inefficients, the wastrels, the physical, mental and moral cripples are carefully preserved at the public expense." *Id.* at 59-60.

socially inadequate.¹⁰⁴ Three landmark decisions illustrate the fear and racism behind the eugenics movement in the United States.

B. Landmark Decisions on Human Sterilization and the Eugenics Movement: Buck v. Bell

The United States Supreme Court's 1927 approval of state-mandated surgery on unwilling patients in *Buck v. Bell*¹⁰⁵ was a radical departure from existing Supreme Court medical jurisprudence. *Buck* was the first and only instance in which the Court allowed a physician, acting as an agent of the state government, to perform an operation that was neither desired by the patient nor medically necessary.¹⁰⁶ Before *Buck*, "[e]xcept in the context of vaccination for contagious disease, coercive court ordered medical procedures had not been endorsed by the Supreme Court."¹⁰⁷

In March of 1924, the Virginia legislature "legalized the compulsory sterilization of 'inmates of institutions supported by the State who shall be found to be afflicted with a hereditary form of insanity or imbecility.'"¹⁰⁸ At the age of seventeen, Carrie Buck was committed to the Virginia Colony for Epileptics and Feebleminded in Lynchburg, Virginia, with a diagnosis of "moral imbecility."¹⁰⁹ Her mother had been committed to the Lynchburg Colony four years prior, and the sterilizers were convinced "that two generations of feeble-mindedness" proved the hereditary nature of the mental defect and served to justify sterilization as the obvious remedy.¹¹⁰ Carrie had also given birth to a child out of wedlock shortly before being committed;¹¹¹ it was determined that the seven-month-old infant, Vivian, had "a look" that was "not quite normal," and therefore the newborn was also deemed

104. *Buck v. Bell*, 274 U.S. 200 (1927) (Virginia Compulsory Sterilization Act was challenged, and sterilization of the socially inadequate was approved); *Loving v. Virginia*, 388 U.S. 1 (1967) (overruled efforts to keep the white race pure through prevention of interracial marriages); and *Skinner v. Oklahoma*, 316 U.S. 535 (1942) (sterilization of hereditary criminals denied equal protection of the laws).

105. *Buck*, 274 U.S. at 200.

106. *Id.*

107. Lombardo, *supra* note 90, at 8.

108. TROMBLEY, *supra* note 4, at 88.

109. *Id.* Very few mental patients left institutions like the Lynchburg institution in Virginia without being sterilized. In cases where children, parents, or guardians refused consent, "doctors or the sheriff would forge the signatures." *Id.* at 237. Often, the hospitals or institutions would sterilize anyway and leave the authorizing papers blank or just have the child's or doctor's name on them. *Id.*

110. *Id.* at 88.

111. Her pregnancy was the result of having been raped by the nephew of her foster parents. *Id.* at 89. "[E]ugenics of the day called her a prostitute." J. DAVID SMITH & K. RAY NELSON, *THE STERILIZATION OF CARRIE BUCK* 5 (1989) [hereinafter *CARRIE BUCK*].

defective.¹¹² Without examining Carrie or her mother, the head of the Eugenics Record Office submitted to the lower court a report stating that Carrie and her family "belong[ed] to the shiftless, ignorant, and worthless class of anti-social whites of the South."¹¹³

It was in the context of this factual background¹¹⁴ that the Virginia Compulsory Sterilization Act was upheld. Justice Holmes delivered his stinging, historic opinion that brought the terror of forced sterilization into the forefront of reality:

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. *Three generations of imbeciles are enough.*¹¹⁵

The opinion of Justice Holmes was based on the philosophy that mental retardation could be eliminated by sterilizing the mentally retarded—a philosophy which has been proven false: "over 80 percent of retarded persons are born to nonretarded parents."¹¹⁶ It was on the basis of this now-outmoded philosophy that Carrie Buck was sterilized without her understanding of what was being done to her, and without her consent. Her capacity to have children was taken away. Following the Court's approval of compulsory sterilization in *Buck*, over thirty states eventually passed sterilization laws.¹¹⁷

112. TROMBLEY, *supra* note 4, at 89.

113. *Id.* Carrie's doctor wanted immunity from performing sterilization procedures and stated that she "[h]as [a] record during life of immorality, prostitution, and untruthfulness; has never been self-sustaining; was maritally unworthy, having been divorced from her husband on account of infidelity; has had a record of prostitution and syphilis; has had one illegitimate child and probably two others." Lombardo, *supra* note 90, at 9.

114. CARRIE BUCK, *supra* note 111, at 89-172.

115. *Buck v. Bell*, 274 U.S. 200, 207 (1927) (citation omitted) (emphasis added).

116. ROBERT H. BLANK, *FERTILITY CONTROL: NEW TECHNIQUES, NEW POLICY ISSUES* 60-61 (1991).

117. *See supra* note 98.

C. *The Sterilization of Hereditary Criminals: Skinner v. Oklahoma*¹¹⁸

In 1942, the Supreme Court took a sharp turn away from its decision in *Buck* when it held that the Oklahoma Habitual Criminal Sterilization Act was unconstitutional because it violated many constitutional rights. The statute defined the "habitual criminal" as a person twice convicted of crimes involving "moral turpitude."¹¹⁹ The statute mandated involuntary sterilization for repeated offenders. This statute came to light when the Oklahoma Attorney General chose to sterilize Jack Skinner.¹²⁰ Skinner had been convicted three times for theft, which was considered to be a crime of "moral turpitude."¹²¹ The prosecution presented no evidence at trial that Skinner possessed a hereditary criminal disposition. Despite the absence of this evidence, the Oklahoma Supreme Court affirmed the judgment of the lower courts and found that Skinner met the definition of a habitual criminal, and that he was accordingly subject to sterilization.¹²²

It was not until 1942, when Justice Douglas of the United States Supreme Court scrutinized eugenic sterilization under the Fourteenth Amendment, that the United States finally embraced the ethical standards it tries so desperately to incorporate into modern jurisprudence. "The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty."¹²³ However, in his concurring opinion, Justice Stone asserted that "[u]ndoubtedly a state may . . . constitutionally interfere with the personal liberty of the individual to prevent the transmission by inheritance of his socially injurious tendencies."¹²⁴ Although the Court was unanimous in holding that the Oklahoma law was unconstitutional, it is difficult to determine if there was any single rationale on which the Justices agreed. At first glance, it might appear that *Skinner* overturned *Buck*, but sterilization laws remained alive after *Skinner*. *Skinner* qualified, but did not overrule, *Buck*. As a result, the search for scientific solutions to social ills continues in this country even

118. *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

119. *Id.* at 536. Several offenses were omitted from the act, namely "offenses arising out of the violation of the prohibitory laws, revenue acts, embezzlement, or political offenses" *Id.* at 537 (quoting Oklahoma's Habitual Criminal Sterilization Act, OKLA. STAT. ANN. tit. 57, § 195).

120. Lombardo, *supra* note 90, at 15.

121. *Skinner*, 316 U.S. at 537. Testimony revealed that Skinner plead guilty to each crime he committed and testified that he stole because of his inability to work or support his wife. *Id.* at 536.

122. *Id.* at 537.

123. *Id.* at 541.

124. *Id.* at 544 (Stone, J., concurring).

today.

D. *Attempts at Preserving the White Race: Loving v. Virginia*¹²⁵

Although the case of *Loving v. Virginia* did not involve sterilization procedures in the United States, it challenged both the constitutionality of Virginia's ban on interracial marriages¹²⁶ and the notion of protecting the purity of the white gene pool.

The 1924 Virginia Racial Integrity Act prohibited interracial marriages involving white persons and made it "unlawful for any white person . . . to marry any save a white person, or a person with no other admixture of blood than white and American Indian."¹²⁷ The Lovings were a bi-racial married couple who lived in Washington, D.C., until 1963 when they returned to their native Virginia. After being charged with violating the Racial Integrity Act, the Lovings argued that the Act violated their Fourteenth Amendment guarantee of equal protection of the law. The case made it all the way to the Supreme Court, where Chief Justice Warren's opinion asserted that "[t]here can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause."¹²⁸ After this case, proponents of the eugenics movement in the United States slowly came to the realization that the invasion of personal reproductive rights may constitute an intrusion on constitutional rights.

The three aforementioned cases lay the foundation for understanding the legal aspects of the eugenics movement in the United States. All of these cases provide points of reference whenever reproductive rights controversies reach the courts.

E. *The Present Legal Status of Human Sterilization Laws in the United States*

In 1978, the majority of states still had laws which allowed compulsory eugenic sterilization. If a doctor, parent, guardian, or even the state wanted someone sterilized, there were few hurdles to get in the way.¹²⁹ Finally, in February of 1979, the United States Department of Health, Education, and Welfare set new guidelines for male and female sterilizations; these guidelines made compulsory sterilizations very difficult to achieve.¹³⁰ Federal funds would not be apportioned unless there was strict adherence to

125. *Loving v. Virginia*, 388 U.S. 1 (1967).

126. *Id.*

127. *Id.* at 5 n.4.

128. *Id.* at 12.

129. TROMBLEY, *supra* note 4, at 197.

130. *Id.* at 199. See also UNITED NATIONS, *supra* note 88.

the guidelines.¹³¹ By 1981, the Department of Health and Human Services had discovered flagrant violations of the 1979 guidelines:

Oregon continued to sterilize indigent under-21s, and defended itself by saying that it did not seek federal reimbursement for such operations Illegal double billing in which both the hospital and the surgeon were reimbursed for sterilization operations was uncovered in Colorado, Illinois and Oregon In Illinois, 2,755 cases of illegally overbilling of the federal government were eventually uncovered.¹³²

It is not surprising to find that several hospitals abided by their own rules of sterilization, and that hysterectomies did not fall under the federal sterilization guidelines.¹³³

Sterilization continues in the United States, and courts, legislatures and administrative agencies are all vigorously involved in making sterilization policies. Many of the policies regarding sterilization are often "contradictory and conflicting."¹³⁴ As this note points out, several states have been particularly discrete with respect to the sterilization policies of their hospitals and the contradictory policies espoused by their judicial systems. The ethical debate is sure to continue in the United States, and as new, less intrusive measures of sterilization become available,¹³⁵ these methods will no doubt pose more of a threat to the fundamental rights and freedoms of the poor and underprivileged. Americans may easily preach equal rights and privacy for all persons, but the United States is clearly no further ahead in recognizing fundamental personal freedoms than its Swedish

131. The guidelines included the following safeguards:

- 1) The patient must be twenty-one or over;
- 2) No one who is declared mentally incompetent or institutionalized may be sterilized;
- 3) A thirty-day waiting period;
- 4) No consents to be obtained while patient is in labor or childbirth, or is seeking or having an abortion;
- 5) An interpreter is required if the patient cannot understand the language of the consent form.

TROMBLEY, *supra* note 4, at 199.

132. *Id.* at 201. For more information on specific guidelines, see ANALYSIS, *supra* note 98.

133. For example, in 1980, the mayor of Richmond, Texas, favored mandatory sterilization of all welfare recipients: "I'm a little discouraged and irritated at the families growing in size all the time and those of us who work and pay taxes having to pay for them." TROMBLEY, *supra* note 4, at 201.

134. BLANK, *supra* note 116, at 12.

135. Subdermal hormonal implants have evolved as a long term, reversible method of fertility control. The most tested and widely used version is NORPLANT, which has been found to provide contraceptive protection for five or six years. *Id.* at 35-36.

counterpart.

IV. THE FUTURE OF EUGENICS IN THE SWEDISH SOCIALIST STATE AND THE AMERICAN DEMOCRACY

[W]hat [sterilization] does is assert that the woman's capacity to reproduce is not to be subject to her own control. It is to be subject to the control of the state. . . . This is not . . . just a matter of interfering with her . . . right to personal autonomy in decision-making, it is a direct interference with her physical "person" as well. She is truly being treated as a means—a means to an end which she does not desire but over which she has no control. She is the passive recipient of a decision made by others as to whether her body is to be used to nurture a new life. Can there be anything that comports less with human dignity and self-respect?¹³⁶

Coercive and involuntary sterilization directly affects the right to beget children because it involves an invasion of the body and undermines the fundamental right of bodily integrity. Almost every country in the world recognizes and protects reproductive freedom, which is embodied in international human rights instruments such as the Universal Declaration of Human Rights,¹³⁷ the Convention on the Elimination of All Forms of Discrimination Against Women,¹³⁸ and the International Covenant on Civil and Political Rights.¹³⁹ The United Nations Declaration of Human Rights states that "[m]en and women of full age . . . have the right to marry and found a family."¹⁴⁰ The United Nations World Population Plan of Action declares that reproductive rights are components of "the basic right of couples and individuals to decide freely and responsibly the number and

136. *Morgenthaler, Smoling and Scott v. The Queen* [1988] 44 D.L.R. (4th) 385, 492 (Can.) (Wilson, J., separate opinion), available in 1988 DLR LEXIS 44, 246-47.

137. Universal Declaration of Human Rights, art. 16, G.A. Res. 217A (III) at 71, U.N. Doc. A/810 (1948), reprinted in FRANK NEWMAN & DAVID WEISSBRODT, *SELECTED INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND BIBLIOGRAPHY FOR RESEARCH ON INTERNATIONAL HUMAN RIGHTS LAW* 24 (2d ed. 1996) [hereinafter *SELECTED HUMAN RIGHTS INSTRUMENTS*].

138. Convention on the Elimination of All Forms of Discrimination Against Women, art. 16.1(e), G.A. Res. 34/180, U.N. GAOR, Supp. No. 46, at 193, U.N. Doc. A/34/180 (1979), entered into force Sept. 3, 1981, reprinted in *SELECTED HUMAN RIGHTS INSTRUMENTS*, *supra* note 137, at 62.

139. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, reprinted in *SELECTED HUMAN RIGHTS INSTRUMENTS*, *supra* note 137, at 33.

140. Universal Declaration of Human Rights, *supra* note 137, art. 16.

spacing of their children."¹⁴¹ The right to decide the number of children one has cannot exist without the right to beget or rear children in the first place.

In 1936, the Commission on Population in Sweden regarded "the idea that people should have the right to decide about their own bodies as an extremely individualistic view."¹⁴² But a fundamental shift in thought came after World War II, and sterilization became and has remained a personal matter. Instead of being looked upon as an instrument of the state, sterilization became an individual right. This new formulation changed both the outlook of politics and the medical procedures used in carrying out sterilizations.¹⁴³ In the United States, the Supreme Court has recognized that the right of privacy entails the right of the individual "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."¹⁴⁴ Therefore, the right to bear and raise children and found a family is inherent in both the United States and Sweden.

Governments must deal with the basic human rights violations that involuntary and coerced sterilization present. Reproductive health and services are connected to the whole of human rights.¹⁴⁵ Two methods to discourage further human rights violations and to enforce compensation for victims of sterilization are humanitarian intervention and the use of economic sanctions. Sweden should take notice of these types of intervention when considering compensation and should utilize humanitarian intervention and economic sanctions to set the standard for the rest of the world. International human rights standards and the United States Constitution protect a woman's right to conceive at will. Without compensation or relief from forced sterilization, Sweden is in violation of international law and takes a dangerous step towards what the United States considers to be an intrusion upon a woman's fundamental rights of liberty and privacy.¹⁴⁶

141. Rebecca Bresnick, *Bearing Children: The Right to Decide*, 22 WTR HUM. RTS. 22, 23 (Winter 1995).

142. WELFARE STATE, *supra* note 10, at 138.

143. "The question is to what extent the talk of sterilization as 'an individual right' reflects a real change in outlook with regard to eugenics and population policies . . ." *Id.*

144. *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972).

145. "The right to reproductive health care raises concerns related to all human rights—economic, civil, social, and political." Anika Rahman, *Toward Government Accountability for Women's Reproductive Rights*, 69 ST. JOHN'S L. REV. 203, 204 (Winter-Spring 1995).

146. Karen Walinski, *Involuntary Contraceptive Measures: Controlling Women at the Expense of Human Rights*, 10 B.U. INT'L L.J. 351, 382-83 (Fall 1992).

A. Sweden's Social Democrats Under Scrutiny: One More Paradox in a Paradoxical Land

The policy of forced sterilization in Sweden seems even more vexatious because it was ushered in under the seemingly intense scrutiny of the Social Democrats. The Social Democrats "built Sweden's welfare state and proclaimed it a paragon of enlightened government."¹⁴⁷ In urging preventative social measures that combined social welfare and efficiency, the party was among those who advocated sterilization most fervently.¹⁴⁸ Under the party's leadership, Sweden successfully introduced the most expansive welfare system in the world. Swedes are now wincing from the idea that the party which introduced a law forbidding parents to slap a naughty child could be capable of supervising institutionalized violence in the form of forced sterilizations of the young, the mentally handicapped, and the lower social classes.¹⁴⁹

It is easy to blame Sweden's tragic combination of docile, submissive citizens and venomous government officials on the Social Democrats who, except for a brief coalition government, have ruled the country since 1932. The Social Democrat Party (SDP) has held power alone or in coalitions during the periods 1932-1976 and 1982-1991, while the non-socialist parties were in government during 1976-1982 and 1991-1994.¹⁵⁰ After the elections in 1994, the SDP returned to power and formed a minority government with 162 of the 349 seats in Parliament.¹⁵¹ Ironically, the period in which the SDP dominated the country almost exactly coincides with the sterilization program. But is the party really to blame? One social commentator in Stockholm viewed the trend of thought during the period of coerced sterilization as universal: "The Social Democrats may have been part of that zeitgeist, but they did not create it. If another party had been in power, the sterilisation law would still have been passed."¹⁵²

The concept with which the Swedish citizen was obsessed was an extreme form of security: "[Sterilization] implies the absence of all things unpleasant and uncomfortable, and always has a connotation of escape from

147. Heintz, *supra* note 7.

148. It was a widely held view in the 1930s that sterilization programs "could yield considerable economic gains for the state." WELFARE STATE, *supra* note 10, at 135.

149. *Gulag Archipelago*, *supra* note 14. For a closer examination of Swedish law see THE PENAL CODE OF SWEDEN (Thorsten Sellin trans., 1972).

150. *The History of Sweden, Parliamentary Democracy*, (visited Sept. 23, 1997) <<http://www.si.se/english/factsheets/history.html>>.

151. *Id.*

152. *Gulag Archipelago*, *supra* note 14. Andres Isaksson, social commentator, feels that "[i]n the end, all this does is just add to the general contempt for politicians." *Id.*

danger or of a frightened child running to his mother."¹⁵³ It appears that citizens in the socialist state sought complete security for themselves and wanted the state to keep them safe from their defective neighbors. The SDP offered protection not only from the mentally retarded, but also from the opinions, disabilities, and misfortunes of the lower classes. The model Swede expected the state to keep him or her safe, not only from war, but also from the "non-Nordic ethnic stock."¹⁵⁴ Furthermore, in the late 1920s, the Swedish model for the welfare state was labeled as "the people's home" and emphasis was placed on solidarity between the social classes.¹⁵⁵ This view is reverberated by other historians who claim that all political parties were jointly responsible for the eugenics policies of the 1920s.¹⁵⁶ Hans-Albin Larsson is one such historian: "No party ever made any fuss about the legislation that permitted forcible sterilisations under such a long time."¹⁵⁷ Such widespread acquiescence may have been due to the fact that the SDP initiated the sterilization process for reasons that were ostensibly based on social progress.

The Swedish Social Welfare Board oversaw the government sterilization policy, the purpose of which was to prevent financial strains on the social welfare state.¹⁵⁸ The Parliament voiced its general endorsement of race hygiene: "To keep the human race in good order, and to improve it, is naturally of considerable interest to the state."¹⁵⁹ The Swedish socialist state, which has preached for the protection of its citizens and which apparently values both group rights and individual liberties, is considered the world's center of moral relativism. Accordingly, it must now pledge to address the past and future victims of sterilization by pursuing avenues of monetary compensation and preventative measures.

B. *Remedying the Situation in Sweden: Politics v. Real Remedies*

A political game has begun. Long-anticipated action by the Swedish government is proving, not surprisingly, to have been politically motivated. Only after pressure from competing governmental parties has the Health and Social Affairs Minister¹⁶⁰ indicated that compensation should be paid to the

153. ROLAND HUNTFORD, *THE NEW TOTALITARIANS* 7 (1972).

154. *Gulag Archipelago*, *supra* note 14.

155. WELFARE STATE, *supra* note 10, at 95.

156. *Wired from Sweden*, *supra* note 21.

157. *Id.*

158. *All Things Considered*, *supra* note 9.

159. WELFARE STATE, *supra* note 10, at 101. After aggressive lobbying, psychiatrist Alfred Petren attempted to convince the Parliament to put the question of forced sterilization to a vote. *Id.*

160. Margot Wallstrom is the Social Welfare Minister of the Social Democrats. See *supra* note 19 and accompanying text.

victims. Former Prime Minister Bildt demanded investigation into forced sterilization that sparked new attention both inside and outside the government.¹⁶¹ Polls show that he is far more popular than Prime Minister Persson's Social Democrats since his rapid gain of moral authority after he served as administrator of the Bosnian Peace Accord.¹⁶² Bildt's party, officially designated as the Moderates, is expected to give the Social Democrats a serious challenge in the 1998 election.¹⁶³ This is especially worrisome to the SDP since it was the party that oversaw the sterilization program. Now nine million Swedes must come to terms with the past and put forth an effort to correct the evils of their history. However, the new-found moralism in Sweden seems to be more the result of political posturing than a true desire to compensate casualties of forced sterilization.

The pressure continues from the Christian Democratic Party in Sweden: "this is a frightening picture that now is being shown to the Swedish people."¹⁶⁴ Swedes have known for years that forced sterilizations took place, but only around thirty women of the estimated 63,000 victims of sterilization have been compensated.¹⁶⁵ While a monetary value cannot be placed on the violation of an inherent human right, compensation is at least progress in the form of recognition of a grave error. A life alone, with no family or progeny, suggests a grim and forsaken existence.¹⁶⁶ A seven-person committee is conducting a comprehensive review of the issue and will attempt to apportion responsibility for the establishment and application of the sterilization laws.¹⁶⁷ The committee will also attempt to "make amends and propose forms of compensation for the victims."¹⁶⁸ Should Sweden then look to the United States in developing a compensation plan for gross violations of the fundamental human right of procreation?

161. *Sweden Bildt*, *supra* note 22. For more information on Carl Bildt, see *supra* note 23 and accompanying text.

162. *Id.* For more information on Bildt's involvement with the Bosnian Peace Accord, see *Wired from Sweden*, *supra* note 21 (Bildt launches moderate call for cross party co-operation).

163. *Sweden Bildt*, *supra* note 22.

164. *Eugenic Past*, *supra* note 11. Alf Svensson, chairman of the opposition Christian Democratic Party, called attention to the issue to gain public support for his party by addressing the need for compensation in a letter to Prime Minister Persson. *Id.*

165. *Wired from Sweden*, *supra* note 21. Ninety-three percent of the 62,888 victims of recorded forced sterilizations were women and research reveals that no male victims have received compensation. WELFARE STATE, *supra* note 10, at 110.

166. Maria Nordin expressed her feelings after applying and being rejected for compensation: "I'm angry and bitter and sad. I'm trying to forget, but it will not work." *All Things Considered*, *supra* note 9.

167. *Wired from Sweden*, *supra* note 21.

168. *Id.*

C. *The United States Has Not Fulfilled Its Responsibility to Compensate Its Own Sterilization Victims*

The ethical debate over non-consensual sterilization in the United States continues at an intense level even today. However, the legal system has yet to take a firm stance on compensation for victims, even though “[h]uman reproduction is not taken lightly in American society.”¹⁶⁹ After one of the most horrific human rights violations in the United States was exposed, little compensation was afforded the victims of coerced sterilization. In 1980, a lawsuit was brought by the American Civil Liberties Union (ACLU) on behalf of 8300 men and women who had been coercively sterilized in Virginia state hospitals between 1924 and 1971.¹⁷⁰ As alleged in the suit, residents were sexually sterilized without any notice or proper explanation of the long-term results of the operation,¹⁷¹ and were not given the proper psychological and medical assistance.¹⁷² One of the petitioners in the suit was Carrie Buck’s¹⁷³ sister, Doris Buck, who had been sterilized at Lynchburg in 1928.¹⁷⁴ Doris and the other victims wanted compensation for their pain and suffering, similar to the desperate plea of Maria Nordin after the Swedish government acted to take important life decisions away from her.¹⁷⁵ Several excerpts from statements of former inmates of Lynchburg, like Doris and Carrie Buck, describe “sexual abuse, medical experimentation and other activities reminiscent of the Nazi concentration camps.”¹⁷⁶

169. BLANK, *supra* note 116, at 121. This is evident from the emphasis placed by the Supreme Court on the natural rights of individuals.

170. TROMBLEY, *supra* note 4, at 235-38. While Virginia had sterilized less than half as many people as did California, the news still sent shockwaves around the world. The hospitals and institutions that reported these sterilizations were Lynchburg, Central, Eastern, Southwestern, Western, and Petersburg. *Id.* at 236.

171. *Id.* at 252.

172. CARRIE BUCK, *supra* note 111, at 252.

173. See *supra* Part III.B for an in-depth look at the case of Carrie Buck.

174. Under the illusion of an appendectomy, Doris Buck was permanently sterilized. After learning the truth, she recalled, “I broke down and cried . . . My husband and me wanted children desperate—were crazy about them. I never knew what they’d done to me.” TROMBLEY, *supra* note 4, at 91.

175. CARRIE BUCK, *supra* note 111, at 251. For further discussion of Maria Nordin’s sterilization, see *supra* note 9 and accompanying text.

176. TROMBLEY, *supra* note 4, at 238. Mr. D (his name has not been published), sterilized at age 13 in 1949, revealed his experience at the institute:

I worked in the operating room. They’d bring in a new one [victim] every 15 minutes for four hours. I’d get a tray of bloody instruments and have to clean him and sterilize them and take them back out. We do this two days a week, but it never was the same two days. On what I called a bad day we’d have forty people.

Id. Mr. D was also subjected to sexual molestation, drugged and then sterilized in his sleep. “I think people would get jobs there just so they could use us sexually. . . . They did lots of

The lawsuit was heard in January of 1985 by the United States District Court for the Western District of Virginia. The ACLU alleged that:

- 1) [defendants] failed to obtain informed consent from victims;
- 2) [defendants] failed to provide adequate notice and explanation;
- 3) sterilization hearings were procedurally defective . . . ;¹⁷⁷
- 4) forced sterilizations violated constitutional standards;
- 5) inherited mental disease or defect was unproved; and
- 6) the defendants failed to provide counseling, instruction or medical advice.¹⁷⁸

These allegations could easily describe the eugenic practices in Sweden. It is easy for the rest of the world to mock Sweden's disregard for human rights, but the rest of the world must bear the burden of staring down the cold hallway of its own gruesome history.

The ACLU case generated world-wide coverage, similar to the recent explosion of media criticism directed towards Sweden.¹⁷⁹ A final settlement was approved in March 1985, and merely provided for a media campaign featuring a series of radio and television announcements directed at the patients of Lynchburg before 1974.¹⁸⁰ The former residents could inquire and be informed whether they had been sterilized and would be provided counseling services charged only on "their ability to pay."¹⁸¹ Although the Virginia Sterilization Act was revised after 1974, the ACLU failed to win costs for reversal operations for the victims or obtain remedies for any infliction of emotional or physical distress.

Sweden should not look to this hollow victory in the United States as guidance on compensation or remedial measures for the victims of forced

bad things to me, but they shouldn't have done that [sterilized him]." *Id.* at 238-39.

177. *Id.* at 252. The ACLU also alleged:

- a) The representation of members of the sterilized class provided by appointed guardians was inadequate and defective;
- b) There was no independent and impartial judicial decision-maker at the hearings;
- c) Independent genetic and medical evidence was not presented and received at the hearings;
- d) No consistent standard of proof was applied at the hearings; and
- e) Findings were not made by clear and convincing evidence at the hearings

Id.

178. *Id.*

179. News coverage ran the story around the world and it was even chronicled in the *New Delhi Times*. The media uncovered information that across America, fifty thousand people, terminally ill or retarded, had been sterilized after *Buck v. Bell*. CARRIE BUCK, *supra* note 111, at 252.

180. TROMBLEY, *supra* note 4, at 253.

181. *Id.* The counseling services were not free of charge and were only for persons who were sterilized against their will or without their knowledge. *Id.*

sterilization.¹⁸² Instead, it appears as if the United States needs guidance, and Sweden should be the first to set an example by amply compensating the wounded and their families. In the eyes of the rest of the world, Sweden represents peace and prosperity; its welfare program has been successful and people generally live longer and are wealthier than elsewhere. It is a model of prosperity and should take positive and decisive measures to compensate victims of forced sterilizations.

V. CONCLUSION: THE EUGENICS OF THE FUTURE

Coercive and compulsory sterilization are political expedients, yet as solutions to human inadequacies they have failed both theoretically and practically. The history of the eugenics movement has shown that sterilization of the poor, unfit, undesirable, and mentally retarded is unlikely to solve either social or medical problems. If one acknowledges that all deviant behavior is not necessarily genetically determined, then one has to acknowledge that a whole range of non-genetic factors continue to contribute to poverty, crime, and sexual precariousness.¹⁸³ Even within the eugenic framework, mutation will always act as the joker in the pack.

Sterilization in Sweden, the United States, and in other areas of the world, that once considered its victims in some way “defective” for social or eugenical reasons, simply exists in order to relieve the imagined burden of the fertility of the unfit on those around them: parents, teachers, social workers, heads of institutions, the medical profession, and the state.¹⁸⁴ It is difficult to conclude that in every case of coercive or compulsory sterilization, more good than harm is achieved. As a political, social, or medical expedient, coercive and compulsory sterilization does not exist, and never existed, for the benefit of the victim.

Involuntary sterilization has thankfully become a practice of yesterday’s science. But its victims have not disappeared. There is no doubt that the cries from the grave are not only those of the victims of sterilization, but also the hushed whimper of generations unborn in Sweden and the United States.

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182. The author was unable to uncover any further positive compensation packages awarded to victims of these procedures.

183. *Europe’s Taboo*, *supra* note 6.

184. Heintz, *supra* note 7.

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