

## **From Word to Practice:**

### Eugenic Language in Sterilization Legislation in North America (1905-1945)

**Abstract:** Between 1905 and 1945, 31 states in the United States and 2 provinces in Canada enacted sterilization legislation. Over 70 statutes and amendments were enacted to guide, oversee and regulate sterilization practice, while over 24 distinct conditions were offered as grounds for sterilization. Although excellent legal, historical, and philosophical scholarship has investigated the motivations, causes and consequences of this legislation (Paul, 1995; Dowbiggin, 1997; Lombardo, 2008), little work has been done to explicitly systematic analyse the language used in sterilization legislation.

This brief study attempts to fill some of the gap by attending to a number of questions that arise in the context of sterilization legislation. Five questions are addressed: Are there any patterns to the eugenic language in sterilization legislation? Does the eugenic sterilization language reflect what is found on other eugenic lists? What can sterilization language tell us about the mechanics of eugenics? What can sterilization legislation reveal about the role of feeble-mindedness or mental deficiency in eugenic history? And finally, what might sterilization language tell us about eugenic thought more generally? In answering these questions, we look to add one more piece to the puzzle that is eugenic history in North America.

## **Introduction**

Between 1905 and 1945, 31 states in the United States and 2 provinces in Canada enacted sterilization legislation. Over 70 statutes and amendments were enacted to guide, oversee and regulate sterilization practice, while 24 distinct conditions were offered as grounds for the practice. Although excellent legal, historical, and philosophical scholarship has investigated the motivations, causes and consequences of this legislation (Paul, 1995; Dowbiggin, 1997; Lombardo, 2008), less work has been done analysing the language of eugenic sterilization legislation.

This brief study attempts to fill some of the gap by attending to a number of questions that arise in the context of sterilization legislation. In particular, five questions are addressed: Are there any patterns to the eugenic language in sterilization legislation? Does the eugenic sterilization language reflect what is found on other eugenic lists? What can sterilization language tell us about the mechanics of eugenics? What can sterilization legislation reveal about the role of feeble-mindedness or mental deficiency in eugenic history? And finally, what might sterilization language tell us about eugenic thought more generally? In answering these questions, we look to add one more piece to the puzzle that is eugenic history in North America. Structurally, the paper is divided into five sections, each dedicated to discussing one of the five questions.

To aid in investigation, a descriptive and analytic analysis was performed using the statistical package SAS version 9.4. The data was collected by selecting key words from each state's sterilization legislation. These traits were then categorized into four groups based on similarities to create a eugenic language variable. The sterilization oversight procedure variable was categorized into 3 types of oversight procedures. This will be discussed further under question three. A univariate analysis was performed on each variable (sterilization amount, eugenic language category and type of oversight procedure) in order to observe the

distribution and frequency. Associations were then tested using ANOVA tables to obtain p-values with a significance cut off of  $\alpha=.05$ .

## 1. Eugenic Language and Sterilization Legislation

The first question to address is whether there are any patterns to the eugenic language in sterilization legislation. Descriptive analysis reveals twenty-four distinct terms, six of which appear more frequently. These are imbecility (17), idiocy (20), feeble-mindedness (33), epilepsy (22), insanity (20), and criminality (14).<sup>1</sup> Collectively, these six terms account for 74 percent of the eugenic language in the sterilization legislation. Interestingly, these six terms are indicative of four larger categories, as each of the twenty-four eugenic traits can be grouped under one of four categories.

The first category contains traits that address intellectual developmental disorders. Examples include traits such as degeneracy, idiocy, and moron. The second category contains conditions that are more traditionally thought of as mental disorders — for example, alcoholism or insanity. The third category encompasses physiological conditions. Conditions under this heading include terms such as epilepsy, syphilis and deformity. Finally, there are those traits that cluster around criminal behavior. These usually have a sexual or moral dimension. Included here are conditions such as pedophile and rape. Figure 1 provides a table of trait frequency by category.

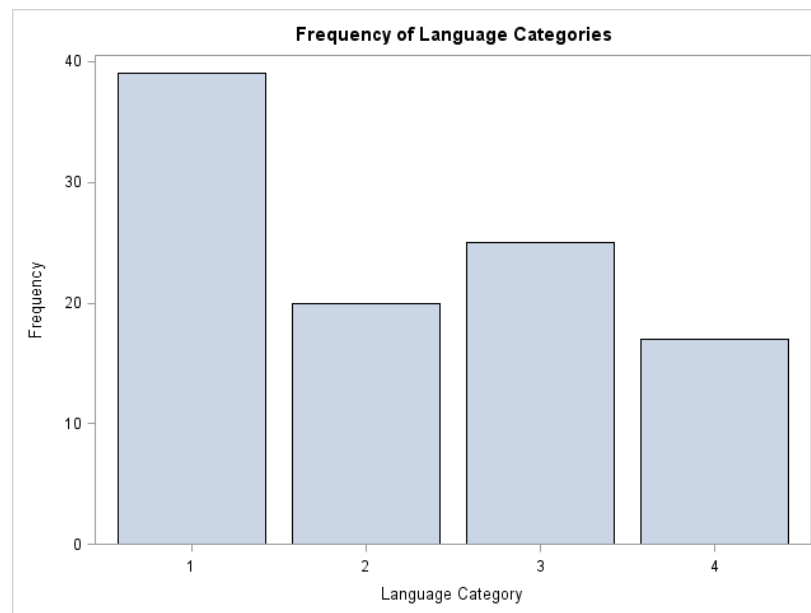


Figure 1. Eugenic trait frequency by language category. 1 represents intellectual development disorders; 2 represents mental disorders; 3 represents physical disorders; 4 represents criminality.

Why does the eugenic language breakdown along the above lines? One possible answer is that categories speak to the different conceptual pre-occupations underlying the legislation. Consider legislation focused on criminality, for example. Early in the history of eugenics many saw sterilization as a means to curb undesirable social behaviors. Pre-occupations with

<sup>1</sup> In total, the 19 terms are mentioned 168 times.

social ills such as pauperism at the turn of the century resulted in legislation focused disproportionately on criminality. Indiana's 1907 law provides an illustrative example.<sup>2</sup> It reads: "it shall be compulsory for each and every institution in the state, entrusted with the care of confirmed criminals, idiots, rapists and imbeciles [...] to perform such operation for the prevention of procreation (Laws of Indiana, ch.215, sec.378, 378, 1907). However, in 1921, the Indiana Supreme Court overturned this law because it failed to provide due process under the 14<sup>th</sup> amendment. As a result, a second law was introduced in 1924.

Interestingly, this second law differed significantly in wording from its predecessor: "[W]henever the superintendent of any hospital or other institution of this state, or of any county in this state, which has the care or custody of insane, feebleminded or epileptic persons, shall be of the opinion that it is for the best interests of the patient and society [...] is hereby authorized to perform [...] an operation or treatment of sterilization on any such patient" (Laws of Indiana, ch.241, sec.1, 713, 1924). From 1907 to 1924, the legislative focus shifted from one focused on "sexualized criminality" to one focused on "mentality". There is a curiosity here, though. For it is unclear why the eugenic language should have changed if the issue was a legal one. As one would expect, the 1924 law did evolve to include further procedural safeguards, but this still does not explain the linguistic shift.

Two options appear possible. The first is that the linguistic change tracked a shift in scientific thinking. Unlike in 1907, perhaps in 1924 criminality was no longer seen as a hereditary trait. Developments in eugenic thinking resulted in a shift in the legislative language. However, this account seems unlikely. By the early 1920s, it was already well appreciated that certain physical conditions like epilepsy had an environmental component. Yet despite this, such conditions still continue to appear in sterilization legislation well into the 1950s. Counterexamples such as this cast doubt on the idea that the legislative language remained in step with developments in scientific thinking.

The more likely option is that important legal lessons had been learnt between 1921 and 1924, ones that were incorporated into the legislation. For example, in 1912, New York's sterilization law was struck down by the state Supreme Court on the grounds it failed to apply equally for criminals both within and outside state institutions, thus violating equal protection clause of the 14<sup>th</sup> amendment.<sup>3</sup> Constitutional challenges such as this highlighted important deficiencies in the legislation. Such considerations suggest that the linguistic shift is better explained as an attempt to avoid certain legal pitfalls rather than an updating of the scientific thinking. The more general point is that different conceptual pre-occupations, such as constitutionality, influenced eugenic language in various ways over time.

## 2. Eugenic Sterilization Language

The second question is whether sterilization language is representative of eugenic language more generally. On this front, it is helpful to contrast sterilization legislation language with another popular eugenic list, that of the Eugenic Records Office (ERO). Early in its history, the ERO provided a list of five categories for eugenic traits. These were physical, physiological, mental, personality and social. These categories claimed to catalogue the various hereditary qualities. How do the traits appearing under these categories square with the ones found in sterilization legislation?

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<sup>2</sup> Indiana was also the first state to pass a sterilization law.

<sup>3</sup> *Skinner v. State of Oklahoma, ex. rel., Williamson*, 316 U.S. 535.

Perhaps not surprisingly, there is some degree of overlap. For example, both lists include traits such as feeble-mindedness and alcoholism under mental categories. However, there is substantial discrepancy when it comes to “personality” and “physiological” traits. While the ERO list includes traits such as “rebelliousness” and “biochemical deficiencies”, the sterilization legislation does not. This is odd because it would seem to indicate that the eugenic sterilization legislation failed to include some key eugenic traits. What explains the discrepancy? The answer may, again, lie with the specific challenges faced by legislators in crafting sterilization laws. The overarching preoccupation of pre-1927 (*Buck v. Bell*)<sup>4</sup> legislation was the ability to withstand constitutional challenge. The failure of earlier statutes emphasized the need for laws focused less on sterilization as punitive criminal punishment and more on sterilization as “therapeutic” treatment. This is why many of the subsequent laws drafted in the late 1920s included clauses focused on the therapeutic benefits of sterilization.

The rule seems to have been to go with what worked rather than what was optimal from a eugenical point of view. This is why many legislatures passed laws mirroring that of Virginia. It was better to sacrifice eugenic “purity” for legal robustness. This fact also explains why so many components of Harry Laughlin’s model sterilization law were never adopted. In his 1922 book *“Eugenical Sterilization in the United States”*, Laughlin outlined what he took to be both a scientifically rigorous and legally watertight sterilization law. In it, he listed a number of conditions that he thought constituted solid grounds for sterilization. The problem was that several of the conditions enumerated, such as criminality, were ones that posed problems for legislators. The result was several laws that stayed closer to practicable policy language rather than theoretically desirable descriptions.

The uptake is that sterilization legislation reveals an interesting cost-benefit tradeoff in eugenic thinking. On the one hand, there is a tendency toward what is “scientifically” desirable, as exhibited in eugenic lists like the ERO. On the other hand, there is what is legally practicable, as exhibited by the sterilization legislation. Early legislation seems to have made tradeoffs in favour of the latter. One way to see sterilization legislation, then, is as a product of weighing eugenic thought against the realities of implementation.

### 3. The Legislative Mechanics of Eugenics

A third question is what sterilization legislation reveals about the mechanics of eugenics. One common narrative in contemporary eugenics literature is that there was an overarching preoccupation with “mental disability”. Though we have already seen that this is not straightforwardly true from a linguistic point of view, there is credit to the idea that “mental health” more generally formed an important category within eugenic sterilization legislation - recall, for example, that mental health terminology accounted for over 50 percent of the eugenic language.

The question, then, is whether there is any overlap between particular eugenic categories and procedural safeguards within the sterilization legislation. Interestingly, it turns out that there is not. None of the four eugenic language categories associate with the different types of oversight procedures found within the legislation ( $p = 0.35$ ,  $df = 2$ ). Figure 2 provides an illustration.

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<sup>4</sup> In *Buck v. Bell*, the United States Supreme Court ruled that Virginia’s 1924 statute permitting compulsory sterilization of those deemed “unfit” did not violate the Due Process clause of the Fourteenth Amendment. For a study of the importance of *Buck v. Bell* on eugenics see Lombardo (2008).

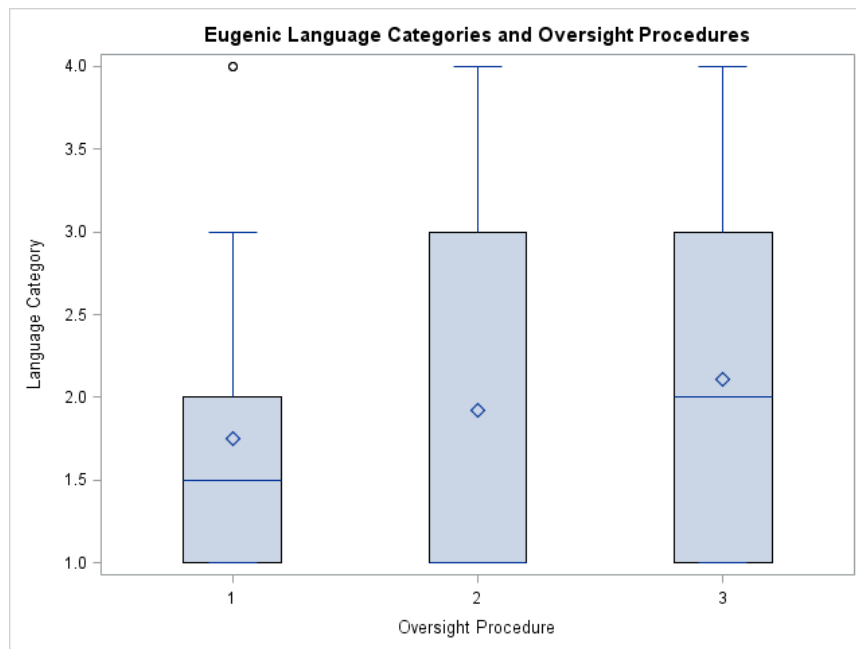


Figure 2. Relationship between eugenic language categories and oversight procedures

It will be worthwhile to pause here for a moment. For it may be unclear what it means to say that the legislative oversight did not correlate with the eugenic language categories. It means two things. First, it means that there is enough consistency between the procedural safeguards to group the processes into stable categories, such as higher, medium and lower grades; second, it means that of those grades no one overlaps to any significant degree with any one category of eugenic language.

What are the oversight procedures? There are three major types. The first is whether sterilization legislation required approval from either an institutional superintendent or an institutional or state board. This is the lowest grade of oversight. According to this mechanism, sterilization was compulsory, requiring only the decision of a single individual or small board of physicians. The second grade of procedural oversight is whether sterilization required individual or board approval in conjunction with a review process. The review process could take one of two forms: (i) sterilization could require a hearing to be held by the board, one at which the sterilization candidate, or their representative, could present objections to the proposed procedure or (ii) sterilization could require the ability to appeal to a local district or circuit court, and in some cases the Supreme Court. Note that although sterilization was still compulsory within these laws, there were some processes to prevent mistreatment or mistakes. Finally, the third and highest grade of procedure is legislation requiring patient or candidate consent, in addition to the previous two requirements. This third type of oversight was the least common within the legislation, appearing only four times, but was also the most restrictive.<sup>5</sup>

<sup>5</sup> As an aside, there is an odd tension in deeming an individual mentally incompetent while at the same time requiring consent. Britain is a good example here, as sterilization proposals often stumbled because of concerns over the liberty of the subject (see, e.g., Thompson, 2010, p.121).

Interestingly, when sterilization figures are compared to oversight procedures, it turns out that higher degrees of oversight do not correlate with more or less sterilizations ( $p = 0.66$ ,  $df = 2$ ). Whether or not a state had more or less restrictive conditions under which sterilization could occur did not relate to the actual number of sterilizations that took place. Figure 3 illustrates.

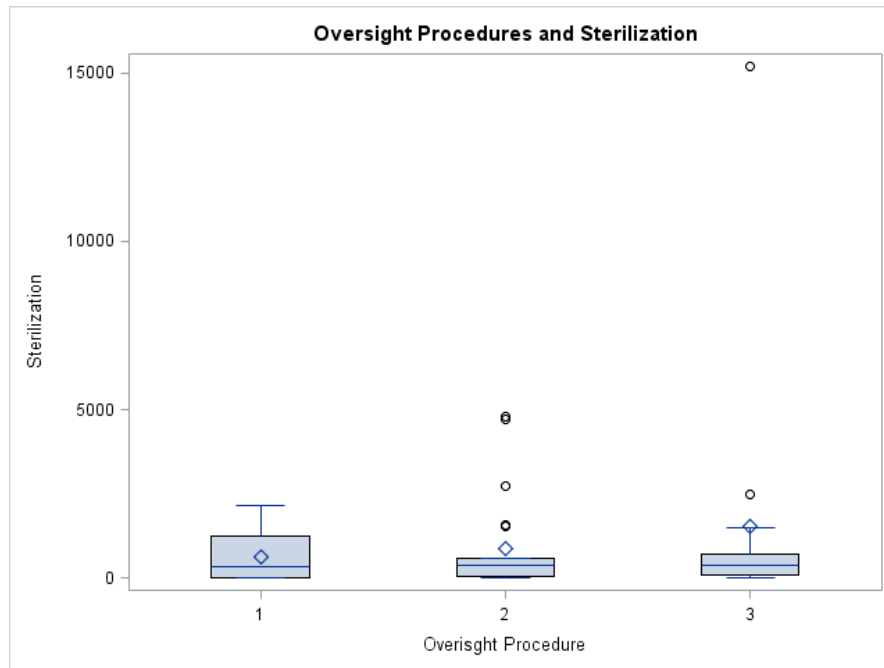


Figure 2. Relationship between oversight procedures and sterilizations.

Though not unobvious, this result serves to reinforce the point that local factors were crucial in determining the implementation of eugenic thought. Sterilization practice depended on much more than the character of the legislation enacted.

#### 4. The Role of the Feeble-minded

One issue that has remained implicit until now is the role of the feeble-mindedness or mental deficiency. As mentioned earlier, one common narrative surrounding eugenic history holds that the “menace of the feeble-minded” was central to the development and implementation of eugenics. For example, Levine and Bashford write: “Historical work on eugenics shows that much, if not most, eugenic intervention was directed at ‘degenerates’ who already ‘belonged’, racially or ethnically to ‘internal threats’ or ‘the enemy within’, whose continued presence diluted the race” (2010, p.6). Or, as Thompson writes: “Wherever sterilization was legalized in the interwar period its main focus was the mental defective” (2010, p.120).

It has already been suggested that the eugenic story is not quite as simple as this narrative would suggest, particularly when attention is given to the language of sterilization legislation. This point is further reinforced when the relationship between eugenic language and sterilizations practice is investigated. This is because statistical analysis reveals no significant relationship between the eugenic language categories and the amount of sterilizations that were carried out ( $p = 0.63$ ,  $df = 3$ ). Figure 3 provides an illustration.

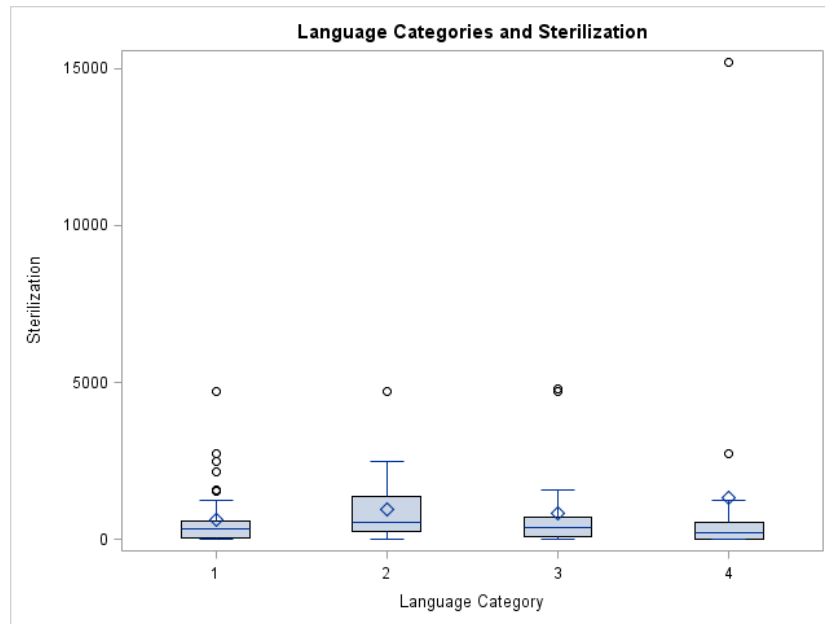


Figure 3. Relationship between eugenic language by category and sterilizations.

Of particular interest here is also the fact that “mental degeneracy”, as tracked by the intellectual development disorder category, did not correlate with the amount of sterilizations. Of course, there are limits to what can be inferred from this, as these results do not mean that there is no relationship. However, they do complicate any straightforward history that conceives of mental disability as the central orientating category of thought.

Admittedly, this conclusion could be strengthened if more detailed information about the reasons for sterilizations were gathered, as this would allow a more reliable indication of whether any particular category of eugenic language was particularly influential on eugenic practice. However, the plausibility of finding such detailed accounts is unlikely. For example, even a preliminary survey of the sterilization information collected by the ERO, probably the best record available for the time, reveals that the reasons often provided for sterilizations rarely match the reasons offered in the legislation. This limits the possibility of finding any systematic mapping. Nonetheless, the present results are still suggestive, because they point to a blind spot in eugenic history scholarship. In spite of what some have claimed, at least with respect to the early legislative history, mental disability does not exclusively form the central category of concern.

## 5. Eugenic Thought Reconsidered

It is time for some general reflection. For it may be unclear what the preceding discussion more generally reveals about eugenic thought. We suggest it emphasizes three main points.

First, it reveals that eugenic thought was not particularly cohesive when it came to sterilization legislation. Rather, the legislation was often formulated in response to local factors. Two findings support this: (i) that there is no overarching linguistic category that dominates sterilization legislation and (ii) that there is no relationship between eugenic language and sterilization figures, which suggests that there must be some further mediating factors.

Second, the study further buttresses the idea that racial and ethnic factors were only secondarily the focus of eugenic thought. It pushes against an earlier thread of scholarship that emphasizes a tight relationship between race and ethnic and eugenic thinking. As Levine and Bashford reinforce, “[e]ugenics and racism have become almost interchangeable terms, but the association is perhaps too simplistic” (2010, p.6). Unlike immigration legislation of the time, such as that passed in British Columbia or Britain, sterilization legislation makes no mention of racial or ethnic terms. This does not mean that racial or ethnic minorities were not disproportionately targeted, as they were, for example, in Alberta. But it does suggest that the relationship between eugenics and race and ethnicity is more nuanced and complicated than anything that can be read off over particular historical documents.

Finally, the discussion highlights a quite counter-intuitive point about procedural oversights in eugenics history. It shows that inclusion of greater oversight procedures did not in and of itself reduce the amount of sterilizations that occurred. This being suggestive of further mediating factors. There are some exceptions to this, of course; British Columbia is one. But on the whole it seems that the link between procedural safeguards and sterilization practice is quite complicated

If there is one takeaway, it is that the study of sterilization legislation offers an interesting lens into the history of eugenics. Further work would do well to mine some of the rich insight sterilization legislation has to offer. At the beginning of the paper, we said that we wanted to add one more piece to the eugenic puzzle. At this point, it seems fair to say that although the piece we have added may not have made the picture any clearer it perhaps has done something to show that the puzzle itself is somewhat larger than usually thought.



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