



North Carolina's Forced-Sterilization Program *A Case for Compensating the Living Victims*

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Executive Summary



BACKGROUND

- Negative eugenics attempts to discourage reproduction by individuals who have undesirable genetic traits.
- The practice of negative eugenics is what led to forced sterilization in North Carolina and genocide in Nazi Germany. In both instances, governments presumed to know who were more desirable humans than others and took drastic actions to achieve their desired ends.
- North Carolina passed its first forced-sterilization law in 1919 and soon thereafter amended the law. In 1933, the legislature created a Eugenics Board that considered whether individuals proposed to be sterilized fit into one of three categories: epileptic, “feble-minded,” or mentally diseased.
- Sterilizations were expressly allowed for the “public good,” regardless of whether it was in the best interests of the proposed sterilization victim. The entire process was a sham, making it extremely difficult, if not impossible, to challenge decisions made by the Eugenics Board.
- In total, North Carolina forcibly sterilized about 7,600 individuals. Forced sterilizations took place until at least the 1970s. It should be noted that a small number of the sterilizations may have been voluntary, but determining what sterilizations were truly voluntary is impossible because the records do not fully explain how “consent” was obtained and the legitimacy of claims in the records that consent existed is questionable.
- North Carolina, unlike most states, drastically in-

creased the number of forced sterilizations after World War II, despite the lessons that the state’s leaders and her people should have learned from witnessing the atrocities committed by the Nazis.

- North Carolina was one of a few states that forcibly sterilized non-institutionalized individuals.
- The eugenics program, overall, had a disproportionate impact on blacks than whites. It was not a consistent trend, however; for decades the program had a disproportionate impact on whites.
- From 1960-68, an astonishing 98 percent of all sterilizations were of females.
- The data are illuminating but do not truly capture the horror of the state’s eugenics program. There are examples of coercion and even worse.

THE CASE FOR COMPENSATING THE LIVING VICTIMS

- North Carolina should compensate the estimated 2,944 living victims who were forcibly sterilized under the state’s eugenics program. The state needs to ensure that, to the greatest extent possible, such gross violations of natural, inalienable rights never happen again.
- There is probably no greater concern among compensation opponents than the argument that such a move could be used to provide justification for giving reparations for slavery. There are important differences between “reparations” for slavery and compensation for living eugenics victims, however.
- Today, none of the individuals who were victims of slavery are alive. With slavery reparations, the gov-

ernment, be it federal or state, would be compensating individuals who were not the subject of any clear and direct harm. In contrast, many victims of eugenics are still alive and are clearly identifiable. Their actual injury is known and not speculative.

- There was no legal recourse for forced-sterilization victims, either to stop the government from sterilizing them or to seek damages after the fact. All branches of the government failed these victims.
- The legislature established the eugenics program, the executive branch implemented the program through the Eugenics Board, and the North Carolina judiciary went out of its way to endorse the practice of forced sterilization. The failure of the judiciary is worth significant attention because it made it virtually impossible to protect one's rights.
- In 1927, the United States Supreme Court, in one of its most infamous decisions, *Buck v. Bell*, held that forced sterilizations were constitutional.
- Justice Oliver Wendell Holmes wrote in *Buck v. Bell*:

*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 Fallopian tubes. **Three generations of imbeciles are enough** (emphasis added).*
- The North Carolina Supreme Court put its stamp on the state's eugenics law in 1976 when the Court

held that the law was constitutional under the state constitution in the case of *In Re Moore*. Not satisfied by ruling the law constitutional, the Court also declared it the "duty" of the legislature to enact sterilization laws.

- In the current North Carolina legislative session, a bill (HB 70) would provide the victims \$20,000 each, which would be some tangible compensation and coincidentally match the \$20,000 given to each Japanese internment victim under federal law.
- As the old saying goes, the road to hell is paved with good intentions, which is worth remembering as the sterilization program is discussed and as new public policies are promoted. Those responsible for the eugenics program, which included every branch of government and its many cheerleaders such as those in the media, likely did not view their actions as evil. Just as some of the most evil figures in history, they saw their actions as promoting good.
- Government officials, be it legislators or bureaucrats, should remember the danger of putting the "greater good" over the rights of individuals, and especially when it comes to fundamental rights. They should learn that it is impossible for them to know what is best when it comes to the personal lives of citizens.
- If we are to live in a free society, we must be willing to accept many things we may not like and that may even impose indirect costs on us. Quite simply, those in government must remember that we are a nation based on individual rights and that their role is to protect those rights, not to abridge them.

INTRODUCTION

I don't want it. I don't approve of it, sir. I don't want a sterilize operation....Let me go home, see if I get along all right. Have mercy on me and let me do that.

— Unidentified woman pleading with the North Carolina Eugenics Board, 1945¹

North Carolina used to decide who was worthy of reproducing and who would be denied this natural and fundamental right. From 1929 to at least the 1970s, the state was involved in eugenics and forcibly sterilized individuals from across the state.

This dark chapter in the state's history should not be forgotten. It is not a remnant from the distant past but something that is recent and still haunts the state today. There are an estimated 2,944 living victims from this atrocity.²

This report provides background on North Carolina's eugenics program and makes the case as to why the victims should be compensated for the horrible wrong that was done to them in the name of the greater good.

Part I: A Brief History of Eugenics in North Carolina



WHAT IS EUGENICS?

Eugenics “aims to improve the genetic constitution of the human species by selective breeding.”³ By trying to control the breeding process, the goal of eugenics is to create a better human race.

There are two approaches to eugenics: positive and negative eugenics. Positive eugenics attempts to encourage reproduction by individuals who have desirable genetic traits. Negative eugenics attempts to discourage reproduction by individuals who have undesirable genetic traits.⁴

The practice of negative eugenics is what led to forced sterilization in North Carolina and genocide in Nazi Germany. In both instances, governments presumed to know who were more desirable humans than others and took drastic actions to achieve their desired ends.

This part of the report provides a brief background on the eugenics movement in North Carolina. It gives important information to evaluate the nature and extent of the forced-sterilization program in the state.

NORTH CAROLINA LAW BEFORE THE EUGENICS BOARD

In 1907, Indiana passed the first forced-sterilization law.⁵ Overall, 33 states forcibly sterilized “undesirable” people under such laws.⁶ The United States Supreme Court in 1927 upheld a forced-sterilization law in a case called *Buck v. Bell* (which is discussed later in this report). That infamous case gave states the green light to move forward with their forced-sterilization laws.⁸

North Carolina passed its first forced-sterilization law in 1919⁹ and amended the law in 1929.¹⁰ The 1929 law clarified:

*The governing body or head of any penal or charitable institution supported wholly or in part by the state of North Carolina, or any subdivision thereof, is hereby authorized and directed to have the necessary operation for asexualation or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof.*¹¹

The law did not give potential sterilization victims any notice or the opportunity to appeal a decision.¹² As a result, the North Carolina Supreme Court in 1933 struck down the law in *Brewer v. Valk*.¹³

THE EUGENICS BOARD AND THE APPEAL PROCESS

The North Carolina legislature quickly redressed the deficiencies in the law and passed a new forced-sterilization law in 1933, which created the North Carolina Eugenics Board.¹⁴

This new board consisted of five members: the commissioner of public welfare, the secretary of the State Board of Health, the chief medical officer of a North Carolina institution for the “feebleminded” or insane not located in Raleigh, the chief medical officer of the State Hospital in Raleigh, and the North Carolina attorney general.¹⁵

The board considered whether the individual proposed to be sterilized fit into one of three categories: epileptic, “feebleminded,” or mentally diseased.¹⁶ Petitions were brought to the board on behalf of an individual by heads of state institutions, county superintendents of welfare, next of kin, or legal guardians.¹⁷

For those individuals who did not want to be sterilized, there was a very limited appeal process. The board approved about 90 percent of the petitions.¹⁸

While there was a way to appeal Eugenics Board decisions to the Superior Court, sterilizations were expressly allowed for the “public good,” regardless of the best interests of the victim.¹⁹ Anyone trying to fight against the sterilization had only 15 days to appeal the Eugenics Board’s decision.²⁰

To win their appeal, they had to show that the board did not follow the law or that the reasons for sterilization were inadequate.²¹ Given the broad scope of the law and judicial deference to medical staff and to agencies, this was an almost impossible task.

If a patient did not have any next of kin, the head of the institution or the county welfare superintendent who wanted to sterilize the patient were the individuals given the power to appoint a guardian for the patient — an obvious conflict of interest.²²

The appeals process was a complete sham, and that is just for those who were able to appeal their cases. Most people lacked the resources or know-how to challenge the board’s decisions.

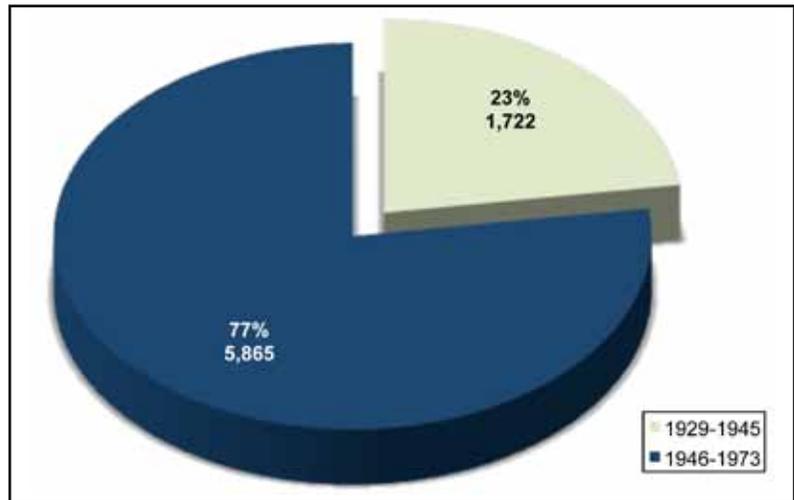
SOME UNFORTUNATE AND UNIQUE CHARACTERISTICS OF NORTH CAROLINA’S EUGENICS PROGRAM

Even though North Carolina started later than other states when it came to forced sterilizations,²³ it still ranks third²⁴ in total number of sterilizations (about 7,600).²⁵ It should be noted that a small number of these sterilizations may have been voluntary, but determining what sterilizations were truly voluntary is impossible because the records do not fully explain how “consent” was obtained and the legitimacy of claims in the records that consent existed is questionable.

North Carolina’s forced-sterilization program also had two unfortunate distinctions:

1. *North Carolina was one of a few states that forcibly sterilized non-institutionalized individuals.*²⁶ While most other states limited forced sterilizations to inmates and those residing in mental health facilities, anyone in North Carolina could be forcibly sterilized.

Figure 1. Total Number of Forced Sterilizations in North Carolina, Before and After World War II²⁹



2. *North Carolina, unlike most states,²⁷ drastically increased the number of forced sterilizations after World War II, despite the lessons that the state’s leaders and her people should have learned from witnessing the atrocities committed by the Nazis. After World War II (post-1945), 77 percent of the forced sterilizations took place in North Carolina (see Figure 1).*²⁸

WHO WAS STERILIZED?

Diagnosis

As shown in Figure 2, most of the individuals sterilized were considered “feeble-minded.”³⁰ Lacking any clear meaning, the term served as a useful catch-all giving the state wide latitude to sterilize individuals deemed unworthy of reproduction.

Race

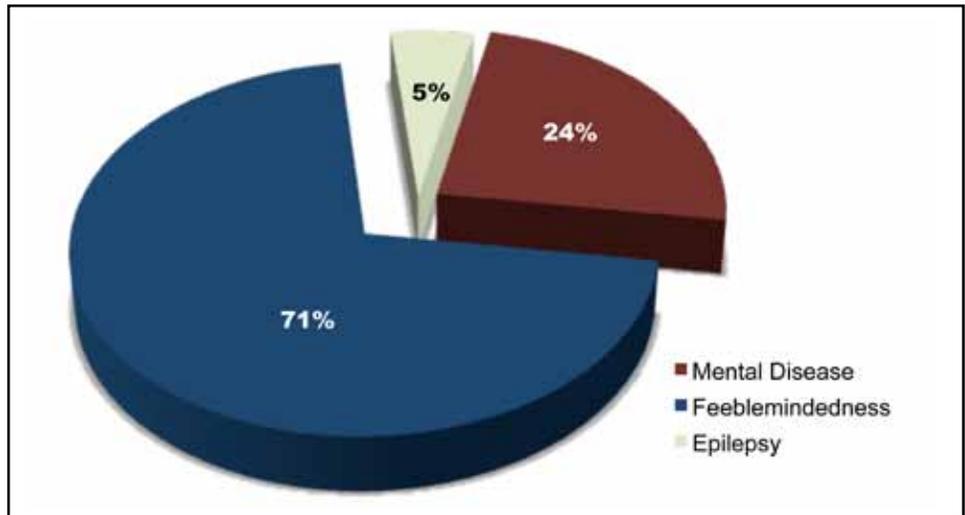
A common misconception holds that the eugenics program was simply motivated by racism. The reality is far more complicated. Far more whites were sterilized from 1929 to 1968 than blacks (4,315 whites vs. 2,777 blacks).³² When taking into account all whites and blacks that were sterilized, about 60 percent of those sterilized were white, while 40 percent were black.³³ Figure 3 shows the number of whites and blacks sterilized from 1936 to 1968.

The percentage of blacks and whites sterilized does not by itself provide a complete picture of who was impacted more, however. Blacks made up a smaller percentage of the total white and black general population. Therefore, on the whole blacks were disproportionately impacted throughout the eugenics period.³⁴

But that disproportionate impact was not consistent throughout the eugenics period. As shown in Figure 4, from 1929 to 1950, the proportion of whites to blacks who were sterilized was greater than the proportion of whites to blacks in the general population. As a result, during that time whites were being disproportionately impacted.³⁵

A shift occurred in the 1950s. Blacks started to experience a disproportionate impact.³⁶ In fact, more

Figure 2. Forced Sterilizations by Diagnosis, June 1929–July 1968³¹



blacks were sterilized than whites between 1960 and 1968.³⁷

This shift is far more complicated than simply attributing the change to racial motivations. For example, during the 1950s, the proportion of white males who were sterilized compared with black males who were sterilized was at its peak (see Figure 5).³⁸

Figure 3. Forced Sterilizations by Race, Whites and Blacks, 1936–1968³⁹

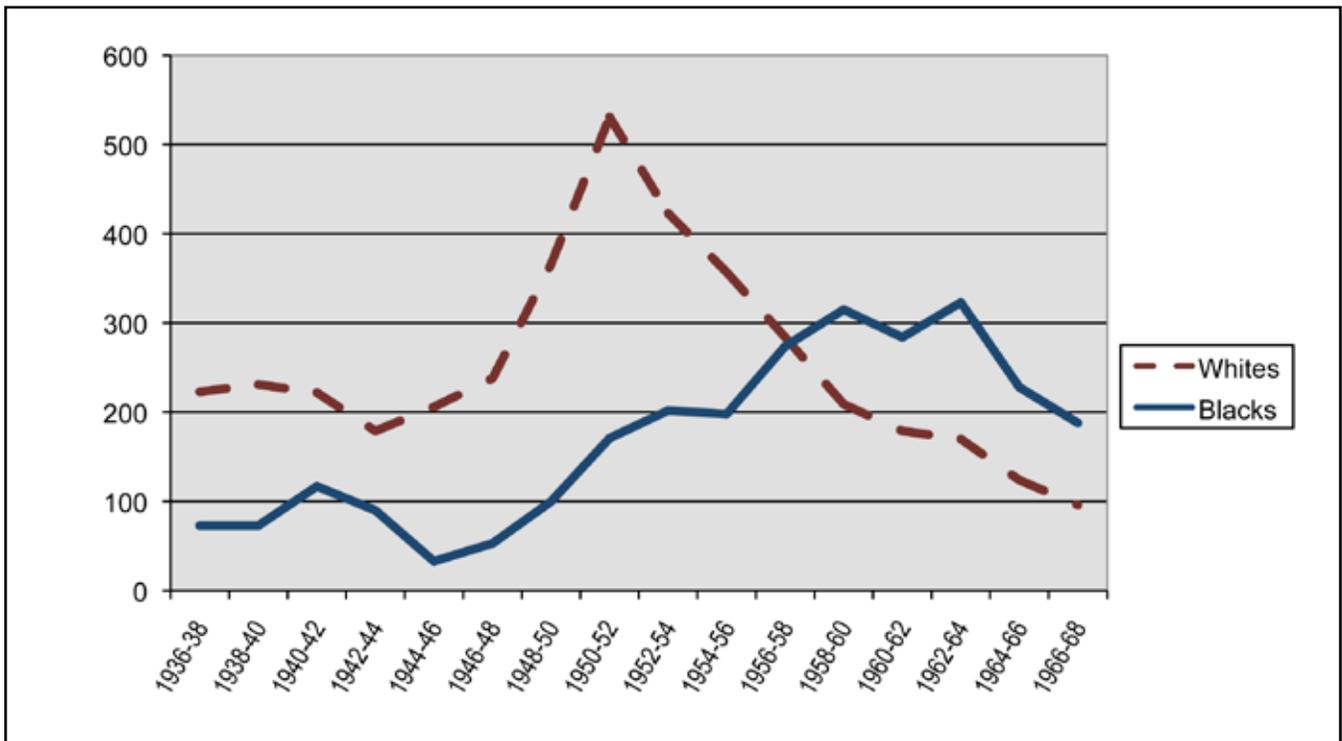


Figure 4. Comparing the Population of the Forcibly Sterilized by Race and by the General Population⁴⁰

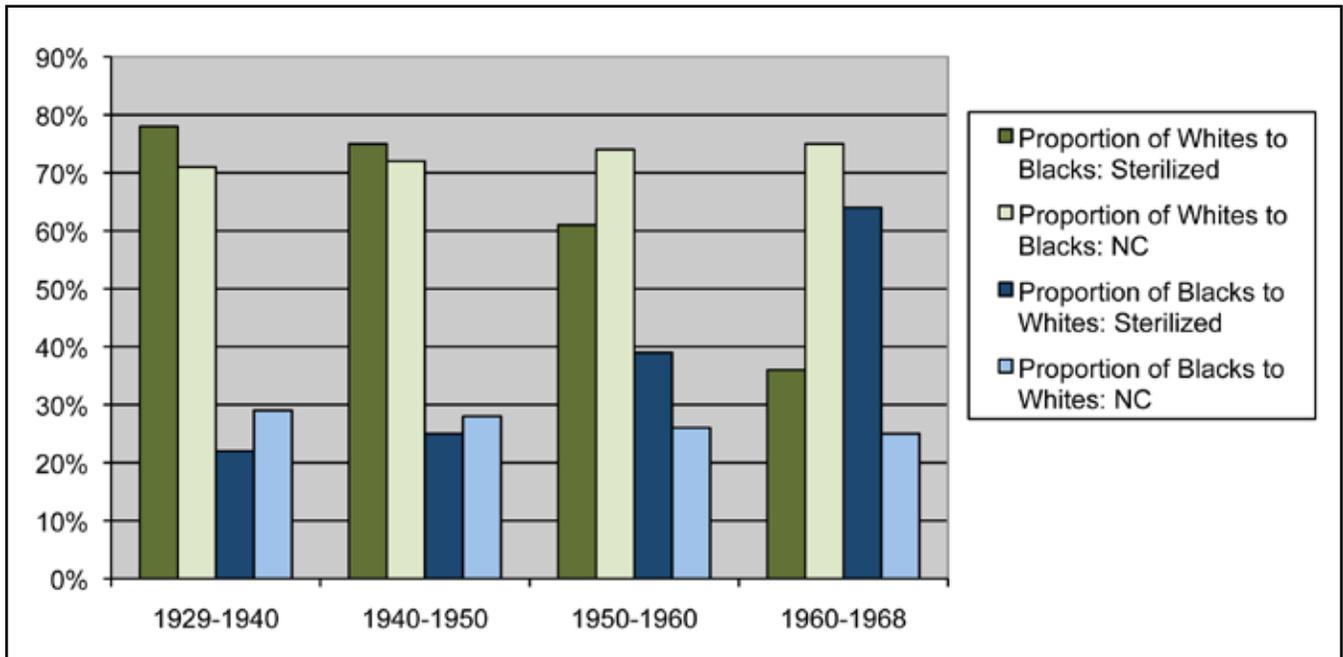


Figure 5. The Proportion of Forcibly Sterilized White Males to Black Males, by Decade⁴¹

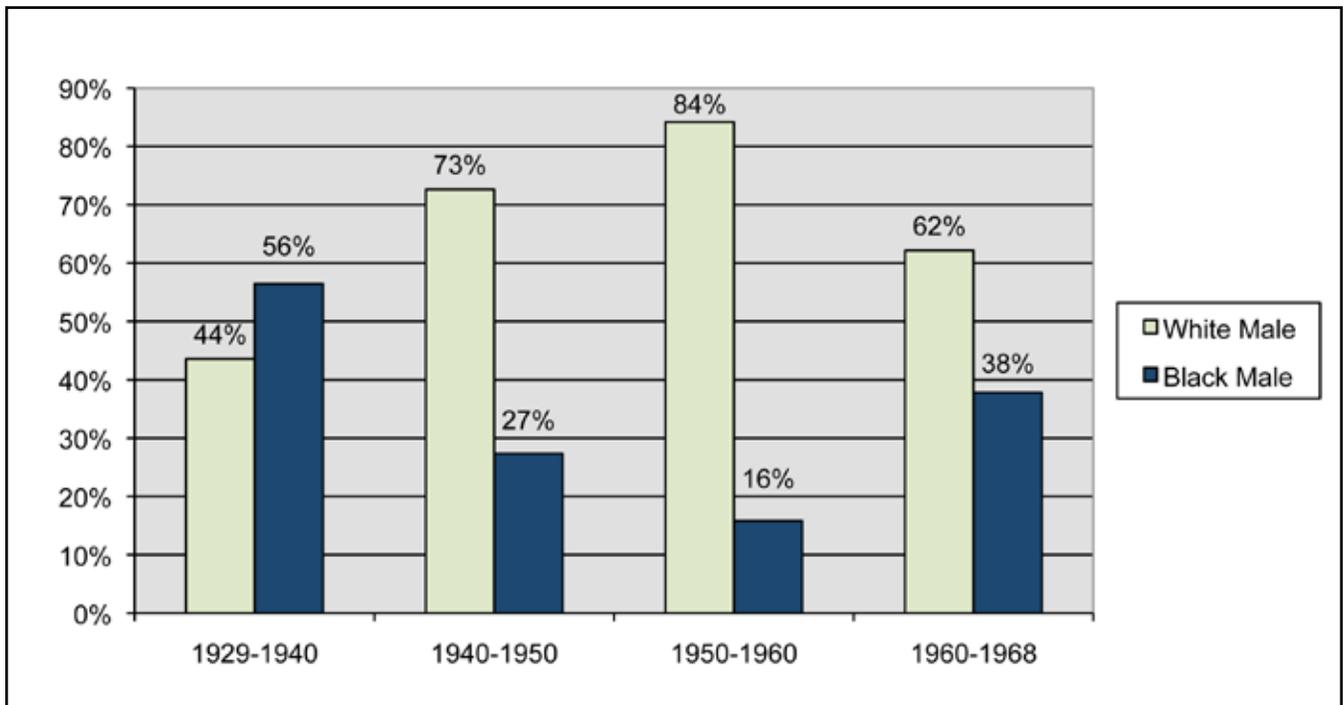


Figure 6. Forcible Sterilizations by Sex and Decade⁴²

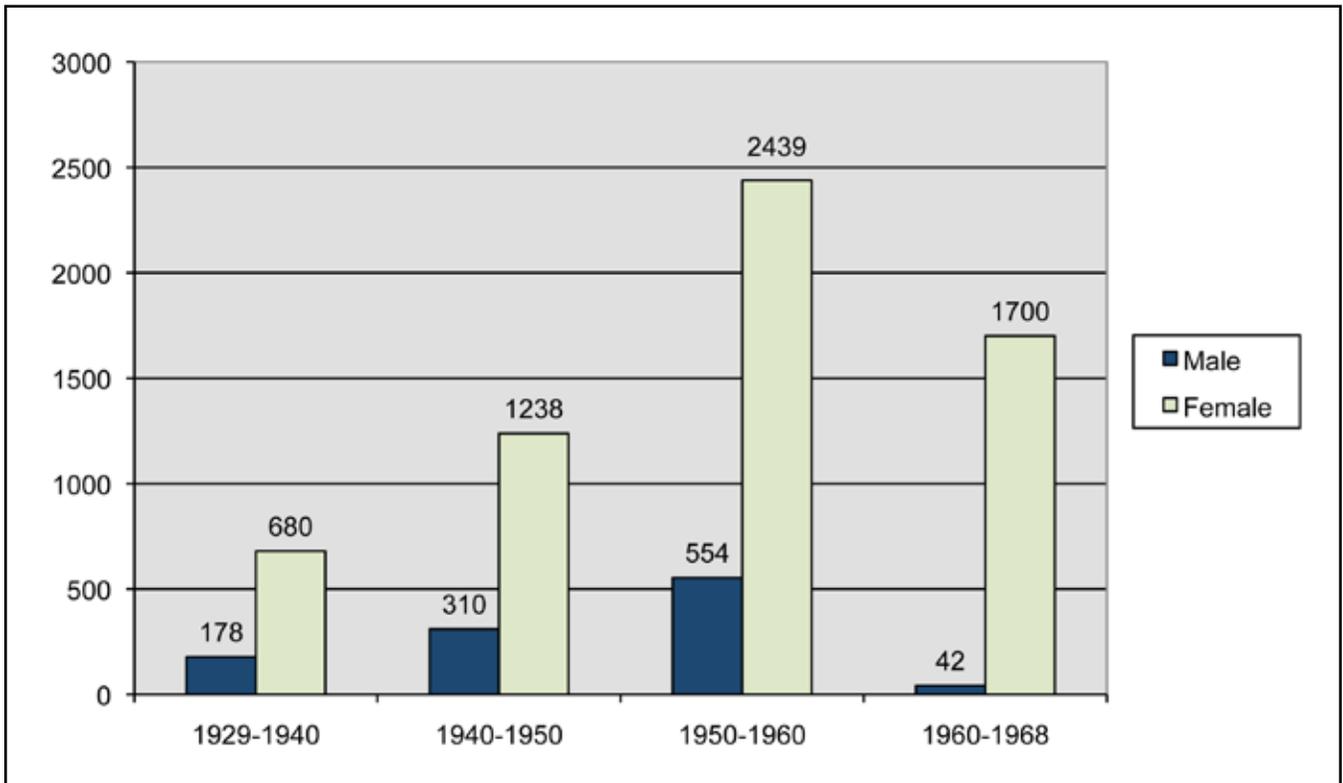
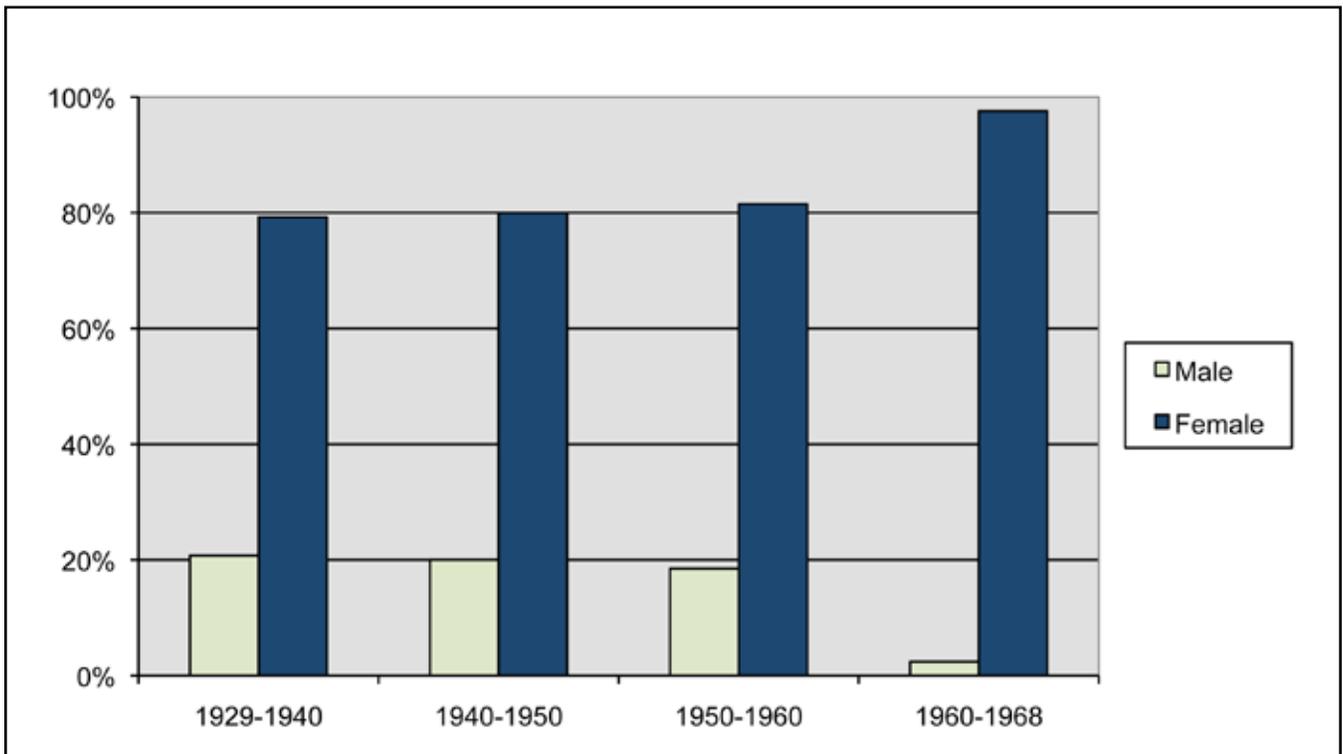


Figure 7. Proportion of Forcibly Sterilized Males to Females, by Decade⁴³



Sex

The eugenics program from the start sterilized more females than males (see Figure 6).⁴⁴ Although a significant number of males was sterilized in significant numbers, it is dwarfed by the number of sterilized females. From 1960–1968, an astonishing 98 percent of the sterilizations were of females (see Figure 7).⁴⁵

Why such a disparity existed is not completely clear, but a sexist outlook appears to have been dominant. The Human Betterment League of North Carolina, a nonprofit organization that played a prominent role in the sterilization program and was frequently cited by the Eugenics Board, included the following in one of its “fact” sheets regarding the sterilization program:

*Feeble-minded girls are particularly in need of the protection of sterilization since they cannot be expected to assume adequate moral or social responsibility for their actions.*⁴⁶

Age

Most sterilizations were of individuals between the ages of 10 to 29. They represented 78 percent of all sterilizations.⁴⁷ The number of sterilizations by age group is shown in Figure 8.

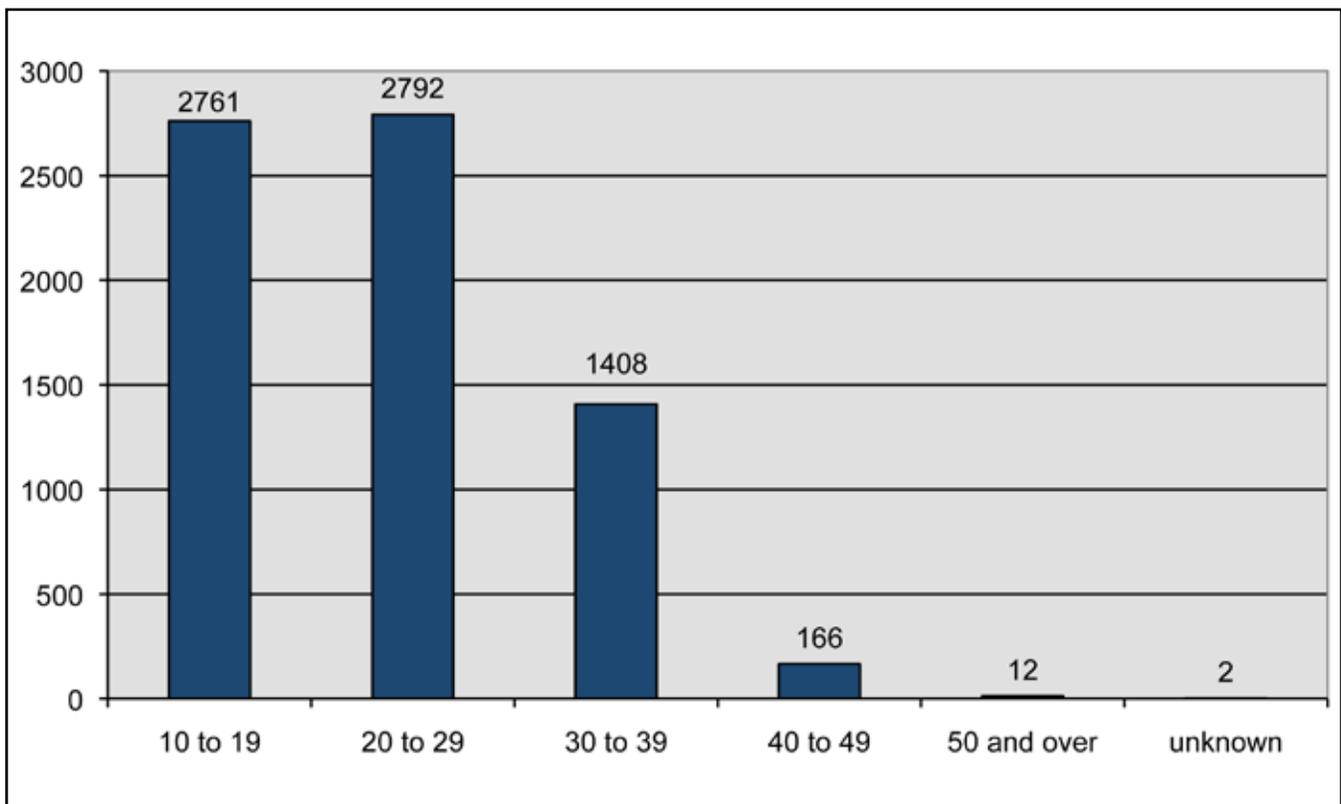
BEYOND THE NUMBERS: NORTH CAROLINA'S EUGENICS PROGRAM IN PRACTICE

Though illuminating, the data do not truly capture the horror of the state's eugenics program. There are examples of coercion and even worse — the following are just some of these examples.

For Nial Cox Ramirez, the state forced her to make an impossible choice in 1965. If she did not “consent” to be sterilized, welfare payments would be denied to her family. She chose to be sterilized.⁴⁸

Elaine Riddick was only 14 when she was sterilized after just giving birth to a child. A social worker pressured Riddick's grandmother to “consent” to have Riddick sterilized or else Riddick would be sent to

Figure 8. Victims of Forcible Sterilizations, by Age⁴⁹



an orphanage. The grandmother, who was illiterate, signed an “X” on the consent form.⁵⁰

Mary English explains that in 1972, when she was 22, an obstetrician told her he was going to perform a birth control procedure on her as part of a state-funded birth control program. Only years later did the doctor tell her she had been sterilized, much to her shock.⁵¹

In 1962, a father admitted to his wife that he had incestuous feelings for his 14-year-old daughter. The parents went to the Eugenics Board seeking to

have their daughter sterilized out of the fear that she would become pregnant — the mother had learned from taking her to the doctor that the daughter had already engaged in sexual intercourse with someone. The board approved the sterilization. The father who admitted to his incestuous feelings provided the consent.⁵²

Many of the sterilizations were approved based simply on the predispositions of the Eugenics Board members, such as opposition to alleged female promiscuity or homosexuality.⁵³

Part II: North Carolina Should Compensate Her Forced-Sterilization Victims



North Carolina should compensate the estimated 2,944 living victims who were forcibly sterilized under the state’s eugenics program. While money should be provided to these victims, the state should also take other steps beyond financial compensation. The state should ensure that, to the greatest extent possible, such gross violations of natural, inalienable rights never happen again.

The step of compensating victims has some opposition. This part of the report gives a response to the arguments made against compensation. Furthermore, it explains why legislative action is necessary and appropriate.

ARGUMENTS AGAINST COMPENSATION

Argument: It Is a Step Towards Reparations for Slavery

There is probably no greater concern among compensation opponents than the argument that such a move could be used to provide justification for providing reparations for slavery. It does not help the cause for compensating eugenics victims that the term “reparations”⁵⁴ is often used in connection with compensation. There are important differences between “reparations” for slavery and compensation for living eugenics victims, however.

Today, none of the individuals who were victims of slavery are alive. With slavery reparations, the government, be it federal or state, would be compensating individu-

als who were not the subject of any clear and direct harm. There would be great conjecture as to whether descendants of slaves are being compensated, and any harm suffered would be vague and not individual in nature, but instead a generalized societal harm.

In contrast, the victims of eugenics are still alive and are clearly identifiable. Their actual injury is known and not speculative. A good way to think of the difference between the two situations is to apply the legal principle of standing as used in federal court.

To have standing, a plaintiff can bring a lawsuit in federal court only if there is an injury in fact. That means there must be a concrete and particularized injury and the injury is actual or imminent, not based on conjecture or hypothetical.⁵⁵ A eugenics victim would meet this requirement. Someone trying to seek slavery reparations would not.

Compensation for Japanese-Americans

Precedent already exists for compensating victims of government atrocities. The Civil Liberties Act of 1988,⁵⁶ signed by President Reagan, provided \$20,000 for each living detainee of Japanese internment camps.⁵⁷ In 1992, President Bush signed a bill

Figure 9. Differences Between Reparations for Slavery and Compensation for Eugenics Victims

<i>Key Questions</i>	<i>Reparations for Slavery</i>	<i>Compensation for Eugenics Victims</i>
Are the alleged victims clearly identifiable?	No	Yes
Are the alleged victims of the direct harm still alive?	No	Yes
Is there actual harm to the alleged victims (i.e., not based on conjecture)?	No	Yes
Is there particularized harm (unique to the individual, not general societal harm) to the alleged victims?	No	Yes

that amended the act to provide \$400 million more in total benefits.⁵⁸

Particularly important is the fact that the act *did not* provide serious ammunition to those in favor of slavery reparations. It provided benefits to surviving detainees only — i.e., the actual victims of the government wrong — and not to the descendants of the detainees.

Red Flags

It is critical that compensation go to the living forced-sterilization victims only. The legislature in 2009 allocated \$250,000 to start the NC Justice for Sterilization Victims Foundation.⁵⁹ Creating the foundation was a good step, but exactly who the foundation would consider eligible for compensation is the subject of some confusion.

Some initial indications suggest that compensation could go to the *descendants* of eugenics victims, not just the victims themselves. To clarify, some of the forced-sterilization victims had children prior to being sterilized.

In a press release⁶⁰ announcing the appointment of Charmaine Fuller Cooper as executive director of the foundation, the North Carolina Department of Administration wrote:

*Cooper's responsibilities will include support services to members of the to-be-named Foundation Board; establish a charter with guidelines for identifying survivors **and their descendants**; examine legal options for restitution and potential funding source; ... (emphasis added).*⁶¹

That language does not directly state that descendants could receive compensation, but people could reasonably infer as much — after all, why try to identify descendants otherwise?

On the same day that press release was distributed, a widely published Associated Press article stated:

*Charmaine Fuller Cooper, named the first executive director of the North Carolina Justice for Victims of Sterilization Foundation, will help develop criteria to determine whether patients **or their descendants** qualify for financial restitution or other assistance, ac-*

*ording to the Department of Administration (emphasis added).*⁶²

The news article certainly suggests that compensation *could* be going to descendants. The legislature will ultimately have to appropriate money to provide compensation and decide whether descendants should receive any of this compensation. Initial signs coming from the Department of Administration, however, are disconcerting regarding the compensation of descendants.

If money does go to descendants, then it becomes more difficult to distinguish properly between slavery reparations and compensation for eugenics. In both cases, parties who are not the actual and direct victims of the government's actions would be compensated.

The descendants of slaves certainly would be much further removed in time from the direct harm incurred by their relatives than the descendants of eugenics victims. Also, the harm they have incurred would be even more speculative, but a policy that compensates those who themselves have not suffered individual and concrete harm could serve as justification for slavery reparations in the future.

Allowing the descendants of sterilization victims to be compensated would blur the line enough so that the slippery-slope argument is justified in making the case against compensation for eugenics victims. It also would mean less money for the living and actual victims of the state's eugenics program.

Regardless of the slippery-slope argument, descendants should receive no compensation, for the same reasons that apply to determining whether people have standing in court. There is no direct injury, and any injury that may exist is, at best, speculative.

Argument: We Were Not Alive When the Sterilizations Happened

Another argument against compensation is that current taxpayers were not alive when the government committed the wrong. Actually, most North Carolinians were alive. The state's eugenics law was not repealed until 2003⁶³ and sterilizations were carried out until at least the 1970s and possibly as late as 1980.⁶⁴

A similar argument is that people should not be required to compensate the victims if they did not live in North Carolina at the time of the sterilizations. Once a person voluntarily chooses to live in North Carolina, he also takes on the responsibilities of citizenship. That includes paying for the state's debts and other obligations.

The government committed, at a minimum, the equivalent of intentional torts (intentional acts to cause harm that are considered civil, not criminal, wrongs, although the same acts could be criminal in nature as well) on these victims, and the legal system simply failed to protect their rights. The compensation may come well after the fact, but that does not exempt the state from properly compensating those individuals they wronged.

If the state took private property via eminent domain but never offered the former owner compensation for that property, the state would still be expected to compensate the eminent-domain victim regardless of how many years had since passed. The issue regarding eugenics victims is even more compelling. The state did not take a house — it physically invaded the bodies of citizens and intentionally destroyed their ability to become mothers or fathers.

Underlying these arguments about whether current citizens should bear responsibility for past state actions is a reasonable concern about a statute of limitations. There certainly should be a point beyond which compensation is no longer available due to the passage of time. This concern would be put to rest, however, by limiting compensation to living victims only.

Argument: We Can't Judge Past Behavior on Current Standards of Behavior

It is true that sometimes the public unfairly criticizes the actions of those who lived before us by judging them according to current moral standards as opposed to the standards during their time. Such a problem does not exist, however, concerning forced sterilization in North Carolina.

As can be seen in Figure 1, 77 percent of the sterilizations occurred after 1945 (after World War II). While most other states had seen the ugly truth of

eugenics in the atrocities of the Third Reich, North Carolina ignored it and dramatically ramped up forced sterilization.⁶⁵

Therefore, North Carolina's actions would have been judged harshly even by the norms *at the time* of the forced sterilizations.

THE CASE FOR COMPENSATING FORCED-STERILIZATION VICTIMS

No Legal Recourse for Victims

Forced-sterilization victims had no legal recourse either to stop the government from sterilizing them or to seek damages after the fact. While they had a means to appeal a Eugenics Board's decision to Superior Court, the process was stacked against the victims. Furthermore, few individuals had the means or ability to file an appeal.

All branches of the government failed these victims. The legislature established the eugenics program, the executive branch implemented the program through the Eugenics Board, and the North Carolina judiciary went out of its way to endorse the practice of forced sterilization. The failure of the judiciary is worth significant attention because it made it virtually impossible for people singled out for forced sterilization to protect their rights.

Buck v. Bell

Victims had little reason to believe they had the right to be protected from forced sterilization. In 1927, the United States Supreme Court, in one of its most infamous decisions, *Buck v. Bell*, held that forced sterilizations were constitutional.⁶⁶

The case involved a Virginia law allowing forced sterilization. Carrie Buck and her mother Emma had been committed to the Virginia Colony for Epileptics and Feeble Minded in Lynchburg, Virginia. Both Carrie and Emma were deemed to be "feeble-minded." Carrie's daughter, Vivian, at only seven months of age, was also deemed "feeble-minded."⁶⁷

The question before the court was whether Carrie could be forcibly sterilized. In one of the most chilling passages in Supreme Court history, Justice Oliver Wendell Holmes wrote:

*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 Fallopian tubes. **Three generations of imbeciles are enough** (emphasis added).⁶⁸*

Behind the scenes was just as chilling. As Jonah Goldberg wrote in his book *Liberal Fascism*:

*In 1927 Holmes wrote a letter to Harold Laski in which he proudly told his friend, “I ... delivered an opinion [Buck v. Bell] upholding the constitutionality of a state law for sterilizing imbeciles the other day — and felt that I was getting near the **first principle of real reform**” (emphasis added).⁶⁹*

The Court failed to mention that Carrie’s foster father committed her to the Colony because she had become pregnant as a teenager — the victim of rape by a relative of her foster parents.⁷⁰ She was sterilized five months after the Court’s decision.⁷¹

It turns out that Carrie was of average intelligence,⁷² and evidence shows that her defense attorney conspired with the Colony’s lawyer so she would lose the case.⁷³

The third generation of “imbecile” to which Justice Holmes referred was Vivian (Carrie’s daughter). The fact that she was deemed “feeble-minded” at the age of seven months should have been an obvious concern to the Court. The Colony determined that she “showed backwardness” at seven months and so labeled her “feeble-minded.”

As it turned out, Vivian made the honor roll during the first grade. Overall, she was an average student. Vivian died at age 8 from measles and an intestinal infection.⁷⁴

While the Court’s decision may have been unpopular with anyone trying to challenge state laws on forced sterilization, it was popular with some people. During the Nuremberg trials, the attorneys for the Nazis used the *Buck* opinion in their defense.⁷⁵

The whole point is that the judiciary, often the last means of recourse for victims of government abuses,

was not an option for protection. There was no way for eugenics victims to stop from being sterilized and no way for them to seek damages when there was no recognized harm.

The *Buck* decision also provided the spark for North Carolina’s eugenics law and other state eugenics laws. After all, the Court gave it the green light. To this day, the *Buck* opinion has not been overturned and thus remains the law of the land.

In Re Moore

The North Carolina Supreme Court put its stamp on the state’s eugenics law in 1976 when the Court held that the law was constitutional under the state constitution in the case of *In Re Moore*.⁷⁶

Citing a Nebraska case, the North Carolina Supreme Court wrote:

Acting for the public good, the state, in the exercise of its police power, may impose reasonable restrictions upon the natural and constitutional rights of its citizens. Measured by its injurious effect upon society, the state may limit a class of citizens in its right to bear or beget children with an inherited tendency to mental deficiency, including feeble-mindedness, idiocy, or imbecility. It is the function of the Legislature, and its duty as well, to enact appropriate legislation to protect the public and preserve the race from the known effects of the procreation of mentally deficient children by the mentally deficient.⁷⁷

The Court was not satisfied merely to rule the law constitutional; it also declared it the “duty” of the legislature to enact sterilization laws. If a victim wanted to get recourse in North Carolina courts, that certainly was not an option.

This case remains the law of the state, and there is no reason to believe a similar statute would be found unconstitutional. In her dissent in the 2009 case of *Britt v. North Carolina*,⁷⁸ Chief Justice Sarah Parker favorably cited *In Re Moore* to support the argument:

Moreover, it is well settled that “[a]cting for the public good, the state, in the exercise of its police power, may impose reasonable restrictions upon the natural and constitutional rights of its citizens.”⁷⁹

Unique Governmental Action

Some past governmental actions are so problematic that they result in some people considering themselves entitled to compensation. It is fairly unique for state government itself to take deliberate steps to harm individuals, as it did with forced sterilization. The government was itself the tortfeasor (the party that committed a legal wrong) when it forcibly sterilized citizens.

The government, by forcibly sterilizing citizens, also interfered with one of the most important fundamental rights, both in nature and in law. The right to reproduce is a basic human right and the very essence of what keeps society alive.

The North Carolina Constitution starts by stating:

Section 1. The equality and rights of persons.

*We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.*⁸⁰

If any right is inalienable, it is the right to have children. The government's actions were so disgraceful because it took away not just some abstract right, but what it means to be human (or for that matter, a member of virtually any species).

The Greater Good

Forced-sterilization proponents argued that it was for the greater good. This long, sad chapter in North Carolina history is a testament to why justifying public policy based on the greater good should be viewed with skepticism. The government should rarely, if ever, take away fundamental rights for the greater good.

The greater-good argument does not hold up when it comes to forced sterilization. Many individuals who were forcibly sterilized, as discussed, had no health problems, physical or mental, warranting sterilization. Many were classified as “feeble-minded” simply because it was a convenient way to sterilize people the government deemed unworthy. There was

no benefit from sterilizing these individuals either to ensure better parenting or to reduce defects.

The concern about ending “generations of imbeciles’ was also a flawed argument. As far back as the 1930s, the North Carolina Eugenics Board *knew* that sterilization was not needed to address defects, writing in a report, “We do not know precisely to what extent mental defects and psychopathic conditions are inherited.”⁸¹

When the defect argument failed, proponents of forced-sterilization then attempted the absurd argument that children raised by parents with mental deficiencies would acquire their parents’ mental characteristics just by being regularly exposed to them.⁸²

They also argued for the “societal benefit” of forced sterilization being a reduction of the burden on the state in dealing with all the consequences of the poor parenting of those considered for forced sterilization. This argument lacked merit on its face — all the more so because most of the people sterilized could not even be accurately described as having severe mental illnesses or mental retardation.

The justification for sterilization turned increasingly to the “benefit” of reducing the strain on the welfare system.⁸³ The Human Betterment League (HBL), a California-based organization founded in 1927,⁸⁴ played a critical role in the eugenics movement and heavily influenced the North Carolina Eugenics Board, as seen in references to the HBL’s propaganda in many Eugenics Board reports.⁸⁵

In 1947, the Human Betterment League of North Carolina⁸⁶ was co-founded by hosiery executive James G. Hanes. It conducted aggressive educational campaigns to push for sterilization (see Appendix A),⁸⁷ and the data suggest it was responsible for the large increase in sterilizations in the 1950s.⁸⁸

A significant focus of the educational effort was on welfare reform. Dr. Charles Gamble, who was a prominent member of the Human Betterment League of North Carolina, helped to shift the focus on welfare, as seen in the troubling poem “The Lucky Morons” (see Appendix B).⁸⁹

A free society allows people to engage in activities that may even impose some indirect costs on society — especially with respect to protecting funda-

mental rights. If forced sterilization was appropriate, then why does North Carolina not continue forcibly sterilizing poor people who put a strain on our welfare system? Why does the state not prohibit risky sexual behaviors that may have a cost in terms of spreading disease?

As a general rule, people understand that intruding on personal sexual behavior and conduct is not the proper role of the government, yet that was so for decades in North Carolina. The state should never play God and determine who is more worthy to procreate than others and whose offspring are undesirable.

Sterilizations Lacked Consent

If the sterilizations were in fact voluntary in nature, this whole issue of compensation would be moot, but there is significant evidence that most of the sterilizations were involuntary. Even if informed consent was secured from parents or guardians (not the victims), the state was sterilizing individuals who never should have been candidates for sterilization.

One example of the state's blanket policy of forced sterilization was its work at the Caswell Training School, a state institution for "people with mental retardation and other developmental disabilities."

According to a 1935 Eugenics Board report:

*None of the inmates of Caswell Training School should be released before being sterilized, except in the few instances where normal children have been committed through error.*⁹⁰

An appeal process may have been available for these inmates, but it was a sham. The state sterilized these individuals without any regard for their individual well-being. The entire illegitimacy of the appellate process puts into question most of the sterilizations.

Even in the instances when parents or guardians did give "consent," the consent often was forced through the use of threats or the parents did not understand what they were signing. In other words, true consent did not exist.

The undue influence of the state and physicians also should be considered. If the state or a doctor came to a parent and declared that it was in the best

interests of their child to have the child sterilized, it would have inappropriately swayed many individuals. Even when parents were knowing co-conspirators and provided consent to the harm imposed on their children, it does not excuse the state's culpability.

Johanna Schoen, a history professor at the University of Iowa, who did an extensive analysis of the Eugenics Board's records and wrote a book on eugenics and North Carolina, found:

*Of roughly eight thousand sterilizations petitions in North Carolina between 1929 and 1975, I found 468 — 446 for women and twenty-two for men — between January 1937 and June 1966 that I consider petitions for elective sterilization, sometimes referred to as "voluntary sterilization". In one-third of the cases, they responded enthusiastically when the caseworker had informed them of the availability of sterilization. During the 1960's, up to 20 percent of the board's annual caseload consisted of clients asking to be sterilized.*⁹¹

While a very small number of the sterilization petitions appear to have been voluntary (about 6 percent if using Schoen's numbers), it is too difficult to determine *objectively* which sterilizations were truly voluntary and which were forced. Examining state records that assert the voluntary nature of sterilizations is far from reliable.

The state's reprehensible actions during this long period make it reasonable to assert that North Carolina needs to offer compensation to all those who were sterilized. Furthermore, the state should not be in the business of evaluating whether or not any particular eugenics victim is due compensation.

RECOMMENDATIONS

Financial Compensation

There is simply no way that North Carolina can make the victims whole and financially right the wrong. In 1996, a female eugenics victim won a case in Canada for wrongful sterilization and wrongful confinement to a school for mental defectives and was awarded \$740,000.⁹² The case of *Muir v. Alberta* led the province of Alberta to award \$142 million to about one thousand eugenics victims.⁹³

This amount of compensation is unlikely in North Carolina, especially given the estimated 2,944 survivors.⁹⁴ In the current North Carolina legislative session, a bill (HB 70)⁹⁵ would provide the victims \$20,000 each.⁹⁶ That sum would provide some tangible compensation to eugenics victims, and coincidentally it would match the \$20,000 given to the each surviving Japanese internment victim under the Civil Liberties Act of 1988.

HB 70 would not, however, simply send payment to the victims. Out of an apparent concern for victims' privacy,⁹⁷ the bill would require those seeking compensation to come forward of their own initiative.⁹⁸ That aspect would make sense only if the program were properly publicized and the privacy concern genuine.

To support this compensation program, \$18.48 million would be appropriated initially⁹⁹ (the total amount required to compensate all the victims would be \$58.8 million). In the current fiscal environment, such an amount would be very hard to come by. It would be unlikely, however, that all the victims would seek compensation. For several reasons, including fear of embarrassment or wishing simply to forget this tragedy in their lives, many victims may not want to come forward.

Other reforms (not in HB 70) could include allowing taxpayers to check a \$3 box on their state tax returns to provide compensation to the victims — which would be in addition to the proposed \$20,000 payment per victim. The measure would function like the state's voluntary-taxpayer-supported campaign-finance program for appellate court races. The \$3 would not increase the amount of taxes owed but would divert \$3 of taxes to the fund.

Another proposed financial benefit could be to preclude all eugenics victims from paying any more state income taxes or local property taxes for the rest of their lives. They should not have to subsidize the government that has cost them so much.

Learning the Right Lessons

Another bill (HB 73)¹⁰⁰ would require training for state and local government employees covering ethics and human rights.¹⁰¹ The concept of ethics training is not a good idea, because much depends on whose ethics will be communicated.

Nevertheless, teaching the importance of the individual in a free society could serve a civic purpose. While it is important to provide compensation for eugenics victims, understanding the lessons learned from this disgraceful period in North Carolina history would be even more important to ensure that such events never happen again.

Making sure forced sterilization does not happen again is too narrow of a goal, however. Instead, the goal should be recognizing and eradicating the underlying mindset in order to prevent other, similar atrocities.

As the old saying goes, the road to hell is paved with good intentions, which is worth remembering as the sterilization program is discussed and as new public policies are promoted. Those responsible for the eugenics program, which included every branch of government and its many cheerleaders such as those in the media,¹⁰² likely did not view their actions as evil. Just as some of the most evil figures in history have done, they saw their actions as promoting good, not evil.

Government officials, be it legislators or bureaucrats, should remember the danger of putting the "greater good" over the rights of individuals, especially with respect to fundamental rights. They should learn that it is impossible for them to know what is best when it comes to the personal lives of citizens. They should know that, in a free society, we must be willing to accept many things we may not like and that may even impose indirect costs on us. Quite simply, they must remember that we live in a nation based on individual rights and that their role is to protect those rights, not to abridge them.

CONCLUSION

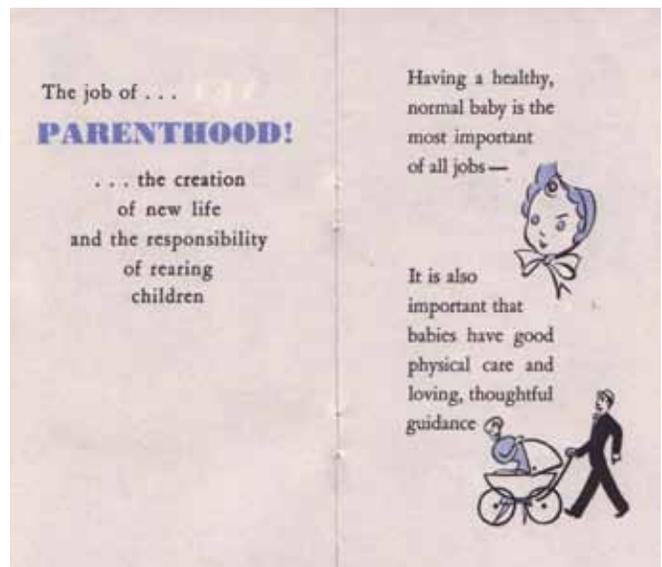
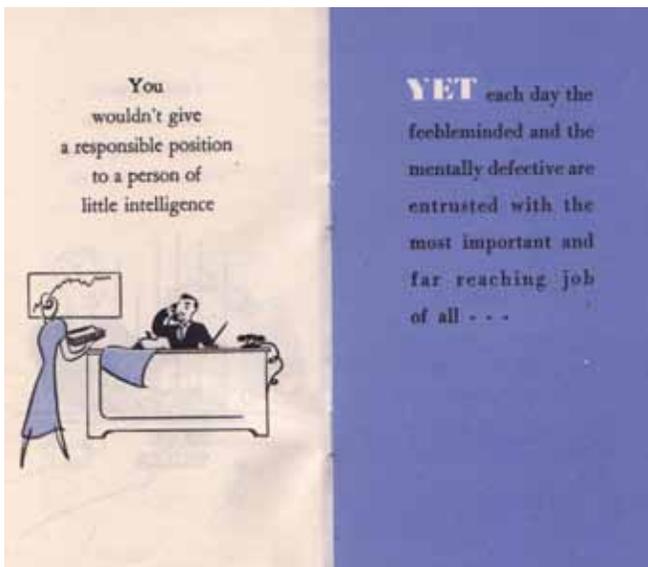
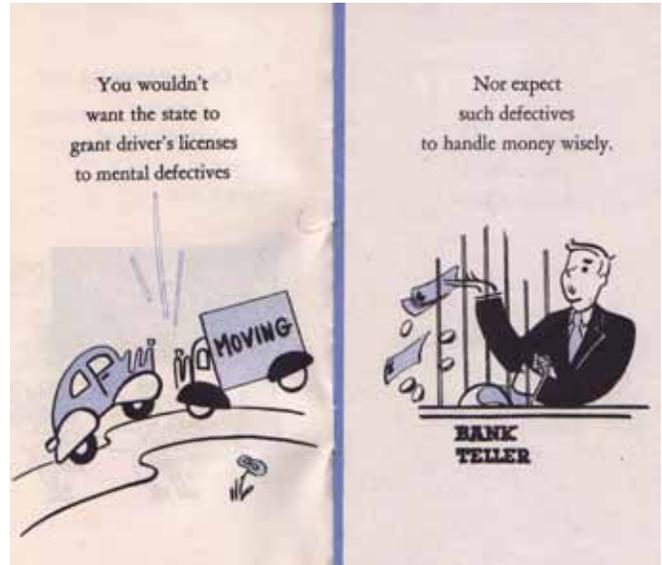
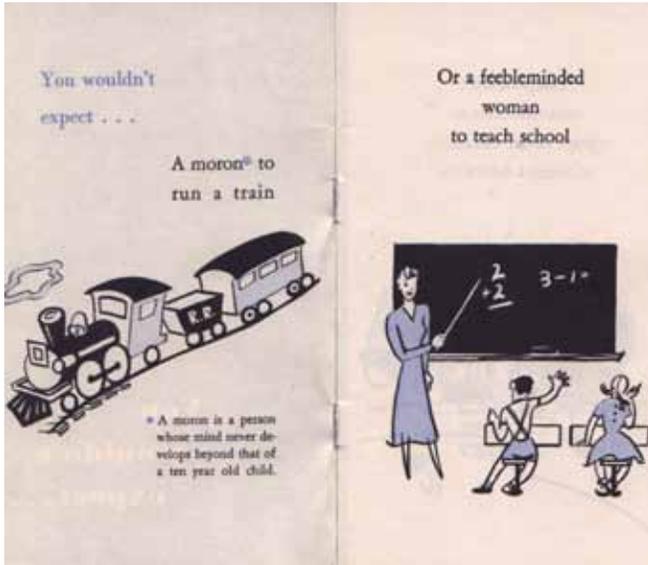
It is critical to compensate North Carolina's living victims of the state's forced-sterilization program and to do so in the proper manner. Nor should the state try to determine which victims are more worthy of compensation than others. The process of deciding which individuals should be compensated is an easy one: if the state sterilized an individual, that person should be eligible for compensation.

The only issue would be verifying the identities of individuals claiming to have been sterilized by the state. Furthermore, the legislature should make it very clear in any statutory language why compensation for these living victims is different from reparations for slavery.

Time is short for the living victims of North Carolina's eugenics program. The legislature should take immediate action so that as many victims as possible can be properly compensated for the wrongs committed against them by the state. North Carolina still has a chance to achieve some redemption for its actions.

APPENDIX A. THE CAMPAIGN FOR STERILIZATION

Here are several pages from one of the pamphlets (titled “You Wouldn’t Expect ...”) published by the Human Betterment League of North Carolina in its education campaign pushing for the sterilization of “morons,” “defectives,” and the “feebleminded.” (The full pamphlet is available from the North Carolina Digital Collections at digital.ncdcr.gov/cdm4/document.php?CISOROOT=/p249901coll33&CISOPTR=201&REC=8.)



The average feeble-minded parent cannot be expected to provide

- good fertility
- a normal home
- intelligent care

to say nothing of the many other things needed to bring up children successfully.

Like  running a train,

 teaching school,

or  handling money,

the job of parenthood is too much to expect of feeble-minded men and women.

They should be protected from jobs for which they are not qualified.

NORTH CAROLINA offers its citizens this protection in the form of . . .

SELECTIVE STERILIZATION

Selective Sterilization means the

Voluntary Sterilization of men and women so they may live safely outside of institutions — live without danger to themselves or to the community —

The operation is a simple one which removes nothing from the body and does not change sex functions or feelings. It is not barnyard castration!

Mental defectives who are sterilized may marry and lead satisfactory lives.

Often they may become reasonably self-supporting if they are spared the responsibility of parenthood —

Selective Sterilization also protects children



for no child should be born to subnormal parents — denied a fair, healthy start in life — or doomed from birth to a mental institution.



North Carolina's Selective Sterilization Law provides:

PROTECTS

- its mentally handicapped men and women
- the children of future generations
- and the community at large.

IT SAVES

- thousands of taxpayers dollars
- needless human tragedy
- wasted lives.

North Carolina's Law provides:

for the sterilization at state or county expense of patients in or out of institutions who are likely to produce children with a tendency towards serious physical, mental or nervous diseases or deficiencies.

It is important that everyone *know and understand* This law and support public officials in carrying out its provisions in cases where protection is needed.

APPENDIX B. "THE LUCKY MORONS"

The following poem was penned by Dr. Charles Gamble, a prominent member of the Human Betterment League of North Carolina, as part of the eugenics educational campaign's effort to shift the public's focus from the state's eugenics system to welfare.

The Lucky Morons

Dr. Charles Gamble

*Once there was a MORON, that means
a person that wasn't very bright,
he couldn't add figures
or make change
or do many things
an ordinary man does.
So he couldn't find a job
and the RELIEF OFFICE
had to help him out
for YEARS AND YEARS.
And one day he met
another MORON
who wasn't any cleverer than he was.
But SHE was nicer to him
than anyone had ever been.
And so he MARRIED HER.
And soon there was a BABY,
and then ANOTHER
and ANOTHER
and ANOTHER.
And the welfare department
had to pay the family
MORE of the TAXPAYER'S
MONEY
and MORE
and MORE
and MORE
And when the children grew
up and went to school
They couldn't learn
very fast
because they had inherited poor minds
from their parents.
They had to repeat MANY
GRADES in the school,
and never learned very much
and never were able to
GET A JOB.
and they cost the schoolboard
and the relief office*

*and the taxpayer
THOUSANDS OF DOLLARS.
AND THESE CHILDREN MARRIED
TOO - - -
So the story goes on
to grandchildren
and greatgrandchildren
and so on forevermore.
Now there was another MORON
who also was a little stupid
and couldn't learn very
much but he lived in
NORTH CAROLINA
and that was very fortunate
for him.
For the Department of Welfare
in his county
Made him one of the
lucky morons
who went to CASWELL TRAINING
SCHOOL.
There he had a mental test
and he was taught a trade
simple enough to fit his brains,
and because the tests showed
he wouldn't ever be very
bright
Or be able to earn enough
to feed a family,
and because his children
might be feeble-minded, too,
a surgeon performed
A SIMPLE OPERATION
which didn't change him AT ALL,
or take ANYTHING out of his
body, but kept him from
having any children.
And after a year or two
a JOB was found for him
which, because of his special training
he DID WELL,
and he earned enough
to be SELF-SUPPORTING.*

*And after a while he met a
GIRL
She, too, wasn't very bright,
but they liked each other.
And she, too, had been to
CASWELL for training
and had a JOB and a
surgeon had PROTECTED her from
UNWANTED
CHILDREN, without
making her different in any other way from
other women.
And because they loved
each other, they married
and WERE HAPPY just as other couples are.
Both kept on with their
Jobs so they were still
SELF SUPPORTING.
And there weren't any children's
mouths to feed ---- although
they wouldn't have
known why if
the operation hadn't
been explained to them.
And with just the two in the
Family, they kept on
being SELF SUPPORTING,
and they were very thankful they lived in
NORTH CAROLINA.
And the WELFARE DEPARTMENT
DIDN'T have to feed them
and the SCHOOLS didn't
have to waste their efforts on
any of their children who weren't very bright.
And because they had been
STERILIZED, the taxpayers of
North Carolina had
saved
THOUSANDS OF DOLLARS
and the North Carolina MORONS LIVED
HAPPILY EVER AFTER.*

1947

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32. The first biennial reports, from 1936 to 1946, provided sterilization data only from 1929 to the year each specific report was published. For example, the 1940 report covered data from 1929 to 1940. To calculate the sterilization information by race for each two-year period, the race data from the previous biennial report were subtracted from the race data from that year's biennial report. For example, to calculate the number of black individuals sterilized from 1938 to 1940, the number of blacks sterilized given in the 1936–1938 report (covering 1929–1938) was subtracted from the comparable number in the 1938–1940 report (covering 1929–1940). Because no such subtractions could be made for data prior to the first report (1936), the graph in Figure 3 does not include sterilization data from 1929 to 1935. Starting with the 1946–1948 report, the Eugenics Board began listing sterilization data by race per year, which allowed the two-year data to be calculated simply by adding the number of sterilizations in the relevant years. The following sources were used:
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*“To prejudge other men’s notions
before we have looked into them
is not to show their darkness
but to put out our own eyes.”*

JOHN LOCKE (1632-1704)

Author, *Two Treatises of Government* and
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