

2008

Disability, Eugenics, and the Culture Wars

Paul A. Lombardo

Georgia State University College of Law, plombardo@gsu.edu

Follow this and additional works at: <https://scholarship.law.slu.edu/jhlp>

 Part of the [Health Law and Policy Commons](#)

Recommended Citation

Lombardo, Paul A. (2008) "Disability, Eugenics, and the Culture Wars," *Saint Louis University Journal of Health Law & Policy*: Vol. 2 : Iss. 1 , Article 5.

Available at: <https://scholarship.law.slu.edu/jhlp/vol2/iss1/5>

This Symposium Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Journal of Health Law & Policy by an authorized editor of Scholarship Commons. For more information, please contact erika.cohn@slu.edu, ingah.daviscrawford@slu.edu.

DISABILITY, EUGENICS, AND THE CULTURE WARS

PAUL A. LOMBARDO*

I. INTRODUCTION: EUGENICS AND DISABILITY

Eugenics is an old word and an old idea, but because of its historical role it demands attention in this Symposium issue on legal and cultural responses to disability. Francis Galton's formal definition of eugenics in 1883 created a field that would study and advocate for "well-born" children, emphasize heredity, and exert a powerful impact on social policies.¹ Lawmakers were seduced by the idea that people are marked with the genetic residue of their ancestors. Government, they said, could sort the fit and the unfit and decide which citizens are worthy to have children. But history shows that instead of improving society, eugenics merely provided a cover for abusing the poor and the disabled. Many eugenicists shared a fear of people with mental disabilities and a desire to rid the world of them. As Henry Goddard proposed in 1927, "[p]erhaps our ideal should be to eventually eliminate all the lower grades of intelligence and have no one who is not above the twelve-year old intelligence level."² This article should serve as a reminder that the eugenics movement was rightfully notorious for its pointed stigmatization of people with disabilities—particularly those with mental disorders.

One of the key focal points of eugenic contempt was the ill-defined trait of "feeble-mindedness."³ According to Massachusetts physician Walter Fernald, those defined as feeble-minded endured "all degrees and types of

* Paul A. Lombardo, Ph.D., J.D., is a Professor of Law at the Georgia State University College of Law in Atlanta, Georgia.

1. FRANCIS GALTON, *INQUIRIES INTO HUMAN FACULTY AND ITS DEVELOPMENT* 17 n.1 (1883).

2. Henry H. Goddard, *Who Is A Moron?*, 24 *SCIENTIFIC MONTHLY* 41, 45 (1927); see also HENRY HERBERT GODDARD, *Feeble-Mindedness: Its Causes and Consequences* 573-74 (1914) (arguing that people with lower intelligence should be placed in a special environment separate from the rest of society).

3. Walter E. Fernald, *The History of the Treatment of the Feeble-Minded*, in *PROCEEDINGS OF THE NAT'L CONFERENCE OF CHARITIES AND CORRECTION* 203, 211-13 (Isabel C. Barrows ed., 1893).

congenital defect”.⁴ The feebleminded ranged from “the simply backward boy or girl . . . to the profound idiot, a help-less, speechless, disgusting burden, . . .”.⁵ Or as Charles Davenport, the dean of American eugenics, said, “[o]ne may even view with satisfaction the high death rate in an institution for low grade feeble-minded.”⁶ Feeblemindedness was also linked to feeble inhibitions,⁷ and every manner of disability, from a man’s premature decline caused by syphilis, to his son’s blindness and his daughter’s withered limb. These conditions were bundled as if all of a piece—results of immoral living, evidence of an intergenerational curse that cascaded through families from parents to children as part of an hereditary legacy. The feebleminded were regularly described by eugenicists as a menace to society, considered to include the “great mass of defectiveness” in institutions, and marked for genetic prophylaxis through the process of sterilization.⁸

The dark history of eugenics makes it tempting, in our hurry to distance ourselves from its shadow, to couple the word “eugenics” exclusively with attitudes that most of us would find unacceptable today. But I will argue instead that we should be careful how we invoke eugenic history—and parsimonious in the way we use the very term “eugenics.” Some combatants in the ongoing “culture war” that pits the world views of people on different ends of the political spectrum against each other are attempting to manipulate and reshape our understanding of the history of eugenics and the word itself. In this article I will show how that manipulation has developed in the press and within popular culture, and explore how the picture it fosters is at odds with the any accurate history of eugenics. If we use the term solely as a rhetorical weapon within a political debate, we flirt with deceit and demagoguery, and run the risk of divorcing eugenics from the historical context in which it developed. When we intentionally debase history, we forfeit whatever opportunities there are for learning from it.

II. EUGENIC HISTORY

What is the history of eugenics? Every account of the origins of the field starts with Francis Galton, who coined the term “eugenics” in 1883.⁹ His

4. *Id.* at 213.

5. *Id.*

6. Charles B. Davenport, *Presidential Address Before the Third International Congress of Eugenics, August 22, 1932*, 17 *EUGENICAL NEWS* 89, 92.

7. See CHARLES B. DAVENPORT, *THE FEEBLY INHIBITED: NOMADISM, OR THE WANDERING IMPULSE, WITH SPECIAL REFERENCE TO HEREDITY* 24-25 (1915).

8. H. H. Laughlin, *Calculations on the Working Out of a Proposed Program of Sterilization*, in *PROCEEDINGS OF THE FIRST NATIONAL CONFERENCE ON RACE BETTERMENT* 478, 478 (1914).

9. GALTON, *supra* note 1.

science of the “well-born” would focus study on “. . . all influences that tend in however remote a degree to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have had.”¹⁰ Galton’s ideas were eventually assimilated into a movement that also relied on the laws of heredity formulated in the 1860’s by Gregor Mendel.¹¹ Mendel’s discoveries remained an obscure episode in the history of science until after his death, and were only widely noticed after Mendel’s work was translated in the first decade of the 20th Century.¹² Galtonian eugenics flourished in England and focused on using statistical tools to quantify biological insights.¹³ The field of biometrics grew out of Galton’s early work on statistics,¹⁴ with further development by his disciple Karl Pearson.¹⁵ In America, eugenics developed with more attention to Mendelian genetics, and this difference prompted sometimes raucous disagreements between the transatlantic eugenic camps.¹⁶

When eugenics finally took root in America, the ideas that it was founded upon led to a national movement that had many diverse facets. There was what could be called the happy face of eugenics, shown to the public as “Better Baby Contests,” which claimed to identify particularly gifted tots and in some rare cases actually arrange a future marriage between

10. *Id.*

11. See generally GREGOR MENDEL, *FUNDAMENTA GENETICA* (Jaroslav Krizenecky ed. & trans., 1965).

12. DONALD PICKENS, *EUGENICS AND THE PROGRESSIVES* 46-48 (1968).

13. See DANIEL J. KEVLES, *IN THE NAME OF EUGENICS: GENETICS AND THE USES OF HUMAN HEREDITY* 37-40 (1985) (discussing the eugenics movement in England); see also NICHOLAS WRIGHT GILLHAM, *A LIFE OF SIR FRANCIS GALTON: FROM AFRICAN EXPLORATION TO THE BIRTH OF EUGENICS* 251 (2001) (explaining Galton’s use of statistics to determine whether “regression toward the mean applied in people as well as in sweet peas.”).

14. GILLHAM, *supra*, note 13, at 258 (noting that the science of biometrics grew out of Galton’s statistical analysis of heredity).

15. *Id.* at 263 (Karl Pearson’s formula, named Galton’s Law of Ancestral Heredity, was the result of Galton’s initial efforts in biometrics).

16. Hamish G. Spencer & Diane B. Paul, *The Failure of a Scientific Critique: David Heron, Karl Pearson and Mendelian Eugenics*, 31 *BRIT. J. FOR HIST. SCI.* 441, 441 (1998). An extensive public debate between the biometricians and the Mendelians broke out in both the lay and scientific press. See David Heron, *English Expert Attacks American Eugenic Work*, *N.Y. TIMES*, Nov. 9, 1913, at SM2; Charles B. Davenport, *American Work Strongly Defended*, *N.Y. TIMES*, Nov. 9, 1913, at SM2; Chas. B. Davenport, *A Reply to Dr. Heron’s Strictures*, 38 *SCIENCE* 773, 773-74 (1913); David Heron, *A Rejoinder to Dr. Davenport*, 39 *SCIENCE* 24, 24-25; see generally C. B. DAVENPORT & A.J. ROSANOFF, *REPLY TO THE CRITICISM OF RECENT AMERICAN WORK BY DR. HERON OF THE GALTON LABORATORY*, *EUGENICS RECORD OFFICE BULLETIN NO. 11* (1914); David Heron, *English Eugenics Expert Again Attacks Davenport*, *N.Y. TIMES*, Jan. 4, 1914, at SM14.

them.¹⁷ A later iteration of a similar contest sought “Fitter Families for Future Firesides.”¹⁸ These contests eventually morphed into a vehicle of the official eugenics movement, as they were designed to identify the bearers of prized “germ plasm,” the eugenicists’ term for what is now known as DNA.¹⁹

The darker, more negative side of eugenics has been explored extensively by historians, and as a result is more widely known.²⁰ The energies devoted to negative eugenics often found an expression in the law. There were, for example, immigration restrictions based on the supposed genetic superiority of some ethnic and racial groups and the inferiority of others,²¹ and “racial integrity” laws to prevent interracial marriage.²² We should also recall that taking care of disabled people was expensive, and the economic motive for many eugenic laws was never far from the surface—better breeding through tax cuts was a common eugenic mantra.²³ There was even a small group of supporters for eugenic euthanasia, who argued that “defective” newborns should simply be killed.²⁴

A powerful feature of eugenic ideology was contained in the mythologies of the so-called problem families—the Jukes and the Kallikaks—told via popular books to generations of school-age children and college students as parables of the generational curse heredity could transmit in the form of criminality, poverty, mental defect, and general moral

17. Steven Selden, *Transforming Better Babies into Fitter Families: Archival Resources and the History of the American Eugenics Movement, 1908–1930*, 149 PROC. AM. PHIL. SOC’Y 199, 206-10 (2005) [hereinafter Selden, *Transforming Better Babies into Fitter Families*]; see also Editorial, *Perfect Babies to Mate for Good of the Race*, L.A. TIMES, Mar. 13, 1915, at 1.

18. STEVEN SELDEN, *INHERITING SHAME: THE STORY OF EUGENICS AND RACISM IN AMERICA* 30-33 fig.2.5 (1999).

19. See *id.*

20. See, e.g., MARK H. HALLER, *EUGENICS: HEREDITARIAN ATTITUDES IN AMERICAN THOUGHT* 111 (1963); KENNETH M. LUDMERER, *GENETICS AND AMERICAN SOCIETY: A HISTORICAL APPRAISAL* 7, 19-20 (1972); ALLAN CHASE, *THE LEGACY OF MALTHUS: THE SOCIAL COSTS OF THE NEW SCIENTIFIC RACISM* 2-6 (2d ed. 1980) (1977); KEVLES, *supra* note 13, at 46-48.

21. See, e.g., JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925*, at 97-116 (1955).

22. Paul A. Lombardo, *Miscegenation, Eugenics, and Racism: Historical Footnotes to Loving v. Virginia*, 21 U.C. DAVIS L. REV. 421, 423 (1988) (hereinafter Lombardo, *Miscegenation, Eugenics, and Racism*).

23. See SELDEN, *supra* note 18, at 27 (noting that during a Fitter Families Contest, the advocates of eugenics circulated propaganda claiming that “every 11 seconds crime cost [sic] America \$100,000. And of those who are committed to jail—one every 50 seconds—very few were found to be normal.”); Scrutator, *Breeding Better Folks Held Way to Lower Taxes*, CHI. DAILY TRIB., Dec. 30, 1923, at A10; Harper Leech, *Sees in Eugenics Way to Cut Cost of Government*, CHI. DAILY TRIB., Sept. 14, 1926, at 24.

24. See MARTIN S. PERNICK, *THE BLACK STORK: EUGENICS AND THE DEATH OF “DEFECTIVE” BABIES IN AMERICAN MEDICINE AND MOTION PICTURES SINCE 1915*, at 23 (1996); IAN DOWBIGGIN, *A MERCIFUL END: THE EUTHANASIA MOVEMENT IN MODERN AMERICA* 17-18 (2003).

decay.²⁵ The Jukes and the Kallikaks were depicted as a lower species of humankind.²⁶ They were thought to be the products of hereditary degeneracy, and portrayed in scientific pedigrees that highlighted feeble-mindedness and sexual excesses.²⁷ Eugenic propagandists proclaimed that all such characteristics could be “bred out” of the population if marriages were eugenic. Marriage restriction laws were adopted to enforce this sentiment.²⁸ But the most popular vehicle for cleaning up the gene pool, and the one with the most widespread legal mandate in the United States, was eugenic sterilization.

III. UNLUCKY SEVENS: EUGENIC CENTENNIAL (2007), THE INDIANA STERILIZATION LAW (1907), *BUCK V. BELL* (1927), THE GEORGIA STERILIZATION LAW (1937), AND THE TRIAL OF THE NAZI DOCTORS (1947)

We recently had an opportunity to reflect on the history of eugenics during the centennial of the first eugenical sterilization law in America.²⁹ Its strongest proponents were Dr. Harry Sharp, physician to the Indiana State Reformatory,³⁰ and his colleague, public health reformer John N. Hurty, a seven time secretary of the Indiana State Board of Health and one time President of the American Public Health Association.³¹ Together they engineered the first eugenic sterilization law in America in 1907.³² Dr. Sharp’s surgeries were controversial, and for twenty years during which about a dozen other states passed their own eugenic laws,³³ a legal

25. See ROBERT L. DUGDALE, *THE JUKES: A STUDY IN CRIME, PAUPERISM, DISEASE, AND HEREDITY* 8, 13-23 (4th ed. 1910) (1884); HENRY HERBERT GODDARD, *THE KALLIKAK FAMILY: A STUDY OF THE HEREDITY OF FEEBLE-MINDEDNESS* (1912); NICOLE HAHN RAFTER, *WHITE TRASH: THE EUGENIC FAMILY STUDIES, 1877-1919*, at 1-2 (1988) (collecting several of the other early family stories).

26. See RAFTER, *supra* note 25, at 1.

27. *Id.*

28. Molly Ladd-Taylor, *Eugenics, Sterilisation and Modern Marriage in the USA: The Strange Career of Paul Popenoe*, 13 *GENDER & HIST.* 298, 301 (2001).

29. IND. CODE ANN. § 22-4-2232 (1908) (repealed 1974); see also Richard Feldman & Jeff Bennett, *The Most Useful Citizen of Indiana: John Hurty and the Public Health Movement*, *TRACES OF INDIANA AND MIDWESTERN HISTORY*, Summer 2000, at 34, 42.

30. See Feldman & Bennett, *supra* note 29, at 42.

31. Indiana Dep’t of Env’t Mgmt., John N. Hurty Award, at www.in.gov/idem/5146.htm (last visited Feb. 3, 2009); see Am. Pub. Health Ass’n, APHA Past Presidents, at www.apha.org/about/aphapastpresidents.html (last visited Feb. 3, 2009); see also Feldman & Bennett, *supra* note 29, at 42.

32. IND. CODE ANN. § 22-4-2232 (1908) (repealed 1974).

33. See HARRY HAMILTON LAUGHLIN, *EUGENICAL STERILIZATION IN THE UNITED STATES* ch. 1, at 15-31 (1922) (summarizing sterilization laws enacted prior to 1922 in Indiana, Washington, California, Connecticut, Nevada, Iowa, New Jersey, New York, North Dakota, Michigan, Kansas, and Wisconsin).

question hovered over sterilization: could eugenic surgery be a tool of constitutional statecraft? That question was answered in 1927 in the case of *Buck v. Bell*,³⁴ which reminded us that 2007 was not only an anniversary year with reference to the pioneering Indiana legislation, but it seemed to echo as the last of a strange coincidence with years ending in seven.

Carrie Buck was the subject of a Supreme Court case that tested a Virginia sterilization law.³⁵ In *Buck*, the theory that poverty, disease, and unruly sexuality could be wiped out by state mandated surgery was applied to a young Virginia woman, whose family history was represented in court by the evidence captured in a pedigree showing hereditary moral degeneracy and illicit sex, as well as mental defect reappearing through three generations of her family.³⁶

What resulted was one of the most shameful Supreme Court opinions ever written. Said Senior Justice Oliver Wendell Holmes, Jr.:

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.³⁷

As I have argued elsewhere, the real story of the Bucks was much more complex: Carrie herself had been raped, her daughter Vivian was perfectly normal, and the case itself was a fraud.³⁸ Nevertheless, in 32 states, there were more than 65,000 surgeries in the U.S. alone from 1907 until at least 1979.³⁹

It took ten years after *Buck* before the nation's last sterilization law was passed in the state of Georgia in 1937.⁴⁰ Agitation for a sterilization law in Georgia, like in many states, revolved around the cost of supporting institutionalized populations.⁴¹ Sterilization was sold in Georgia as it had been in other states, as a prudent part of state budget management and a

34. *Buck v. Bell*, 274 U.S. 200 (1927).

35. *Id.*; see 1924 Va. Acts 569 (repealed by Act of Apr. 2, 1974, ch. 296).

36. HARRY H. LAUGHLIN, THE LEGAL STATUS OF EUGENICAL STERILIZATION 18 (1930) (chart showing the history of feeblemindedness in Buck's family).

37. *Buck*, 274 U.S. at 207 (citations omitted).

38. PAUL A. LOMBARDO, THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT AND *BUCK V. BELL* 104, 116 (2008).

39. See *id.* at 294 app. c (Laws and Sterilizations by State).

40. 1937 Ga. Laws 414 (repealed 1970).

41. See, e.g., ANNE MOORE, THE FEEBLE MINDED IN NEW YORK: A REPORT PREPARED FOR THE PUB. EDUC. ASS'N OF NEW YORK 86 (1911) ("To support a feeble-minded person in one of the state institutions costs the state, on the average, \$161.20 a year.").

step on the road to lower taxes.⁴² In the depths of the Great Depression, civic leaders pressed for a medical solution that would rid the state of people deemed “generally defective in any way.”⁴³

In 1934 the Chairman of the State Board of Control for Charitable Institutions announced a twenty-five percent reduction in the budget appropriation—based on reduced state revenues—and maintained that “insanity and mental deficiency appear to be rapidly increasing.”⁴⁴ His remedy for this rapid increase in insanity was sterilization.⁴⁵ Supporters of sterilization applauded the Nazis, whose own eugenic policy was already in operation.⁴⁶ They judged Hitler’s project as “a step in the right direction.”⁴⁷

The proposed Georgia law targeted anyone with a “physical, mental, or nervous disease or deficiency” who might have children with similar problems, and created a state board of eugenics that directed superintendents of state asylums to name candidates for sterilization surgery.⁴⁸ Chain gang wardens could also recommend cases.⁴⁹ When Georgia’s law passed through the legislature, the press declared that sterilization appealed to “the common sense and reason of the people.”⁵⁰ The bill was vetoed by the Georgia governor, but it reappeared, was again passed in the legislature, and was signed by a new governor following the 1937 legislative session.⁵¹ Some 3,300 Georgians endured surgery under this law until its repeal in 1974.⁵² Between Indiana’s 1907 sterilization statute and Georgia’s 1937 act, thirty other states adopted laws that would

42. See *Lindsey Urges Sterilization as Insanity Ban*, ATLANTA CONST., Mar. 29, 1934, at 1A [hereinafter *Lindsey*].

43. *Atlanta Doctors to Drive for Sterilization Bill*, ATLANTA CONST., Feb. 4, 1934, at 1A [hereinafter *Atlanta Doctors*].

44. *Lindsey*, *supra* note 42.

45. *Id.*

46. The German sterilization law of 1933 resulted in approximately 400,000 sterilizations by 1945. Over 5,000 deaths resulted from the surgeries that were directed towards “feeble-mindedness,” schizophrenia, genetic epilepsy, genetic blindness, and severe deformity, among others. Susan Bachrach, *In the Name of Public Health—Nazi Racial Hygiene*, 351 NEW ENG. J. MED. 417, 418 (2004).

47. *Atlanta Doctors*, *supra* note 43.

48. 1937 Ga. Laws 415 (repealed 1970); *House Approves Sterilization Bill*, ATLANTA CONST., Feb. 10, 1937, at 11.

49. *House Approves Sterilization Bill*, *supra* note 48; Edward Larson, *Belated Progress: The Enactment of Eugenic Legislation in Georgia*, J. HIST. OF MED. & ALLIED SCI. 44, 54-59 (1991) [hereinafter *Belated Progress*].

50. *Sterilization Bill Passes the House*, ATLANTA CONST, March 9, 1935; *Belated Progress*, *supra* note 49, at 59-63.

51. Edward J. Larson, *Breeding Better Georgians*, 1 GA. J. S. LEGAL HIST. 53, 66-70 (1991).

52. *Belated Progress*, *supra* note 49, at 44.

eventually lead to surgery for more than 65,000 people.⁵³ Different states chose to eliminate childbirth in different kinds of people. Some named the “crippled, blind, degenerate, and deficient,”⁵⁴ while others picked “paupers and the criminalistic.”⁵⁵ But in all states those most likely to be sterilized were poor people living in state institutions.⁵⁶ From the end of World War II until the law was repealed in 1970, more operations were performed in Georgia than any state except North Carolina.⁵⁷ Even though the law was in force for fewer years than any other state, the 3,300 operations made Georgia fifth in the U.S. in the number of eugenic surgeries.⁵⁸

The economic motive for sterilization also resonated in other countries. As one of the first acts of the new Nazi government, Germans adopted an expansive sterilization law that went into effect in 1933.⁵⁹ Propaganda in Germany focused on the lifelong costs of supporting any “genetically ill” person.⁶⁰ The German law eventually provided the legal justification for over 400,000 sterilizations.⁶¹ In 1946, the Nuremberg war trials were convened.⁶² While prosecutors at Nuremberg were hesitant to condemn German sterilizations that occurred under the rubric of domestic law, they

53. LOMBARDO, *supra* note 38, at 294 app. c (Laws and Sterilizations by State).

54. See, e.g., 1921 Wash. Sess. Laws 162 (statute targeting the “feeble minded, insane, epileptic, habitual criminals, moral degenerates, and sexual perverts...”); 1913 N.D. Laws 63 (where the statute targets “[c]onfirmed criminals, [i]nsane, [i]diots, [d]efectives and [r]apists”).

55. See e.g., 1917 S.D. Sess. Laws 378 (where the law focuses on the “[i]diot, [i]mbeciles and [f]eeble-[m]inded persons. . .”).

56. Alexandra Minna Stern, *Sterilized in the Name of Public Health*, 95 AM. J. PUB. HEALTH 1128, 1131-32 (2005) (explaining that most of those sterilized in California were “either working class or lower middle class.”).

57. S. Res. 247, 149th Gen. Assemb. (Ga. 2007); see also LOMBARDO, *supra* note 38 at 294 app. c (Laws and Sterilizations by State).

58. LOMBARDO, *supra* note 38 at 294 app. c (Laws and Sterilizations by State). Another Georgia eugenic law involved race. See 1927 Ga. Laws 272. In 1927, the language of “racial integrity” was borrowed from states with laws that prohibited interracial marriage. See Comment, *Intermarriage with Negroes. A Survey of State Statutes*, 36 YALE L.J. 858, 858-60, 862-63 (1927) (discussing state laws prohibiting intermarriage between Caucasians and African-Americans, current in twenty-nine of the states in 1927); Lombardo, *Miscegenation, Eugenics, and Racism*, *supra* note 22, at 423. Under the pretense that it was acting with scientific precision, the state tried to define the purity of a white bloodline, marking “negroes, mulattoes, mestizos,” and those with “African, West Indian, or Asiatic Indian blood in their veins” as unfit. 1927 Ga. Laws 272 (“An Act to define who are persons of color and who are white persons, to prohibit and prevent the intermarriage of such persons[.]”).

59. See ROBERT J. LIFTON, *THE NAZI DOCTORS* 23-27 (2000) (1986).

60. See ROBERT PROCTOR, *RACIAL HYGIENE: MEDICINE UNDER THE NAZIS* 182-83, figs.36-37 (1988).

61. Bachrach, *supra* note 46, at 418.

62. See generally TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10 (U.S. Gov. Prtg. Office 1949) [hereinafter TRIALS OF WAR CRIMINALS].

did choose to pursue concentration camp doctors and others for performing sterilizations on camp prisoners.⁶³ Those procedures were often done using experimental means, such as caustic chemicals or radiation, and were condemned as torture that occurred under the guise of medical research.⁶⁴ Thus, a full four decades after the 1907 "Indiana Experiment,"⁶⁵ the international community condemned experimental sterilization as a war crime.⁶⁶

IV. EUGENIC APOLOGIES

In 2002, in an attempt to highlight one of the more notorious episodes of eugenic history that has special significance for disability advocates, a marker was erected to commemorate the seventy-fifth anniversary of the *Buck* case in Carrie Buck's hometown of Charlottesville, Virginia.⁶⁷ In 2007, scholars gathered with public officials in Indianapolis, Indiana to put up a second marker as a permanent remembrance of the one hundred year old Indiana sterilization law.⁶⁸ After a public symposium that explored the history of eugenics,⁶⁹ the marker was unveiled by Linda Sparkman, who had herself been a litigant in a Supreme Court case that challenged the judge who ordered her sterilization.⁷⁰ The Indiana marker now sits outside of the

63. See PROCTOR, *supra* note 60, at 117.

64. See TRIALS OF WAR CRIMINALS, *supra* note 62, at 37, 48-50.

65. See R. Newton Crane, *Experiments in Eugenics by American State Legislatures*, 10 J. SOC'Y COMP. LEGIS. 120, 122 (1909).

66. See generally TRIALS OF WAR CRIMINALS *supra* note 62, at 37.

67. Paul A. Lombardo, *Taking Eugenics Seriously: Three Generations of ??? are Enough?*, 30 FLA. ST. U. L. REV. 191, 199-201, & n.56 (2003) (hereinafter Lombardo, *Taking Eugenics Seriously*).

68. 1907 Ind. Acts 377; see also Indiana Historical Bureau, 1907 Indiana Eugenics Law, at www.in.gov/history/markers/524.htm (last visited Feb. 3, 2009).

69. See Indiana Eugenics: History and Legacy, 100th Anniversary Symposium (Apr. 12, 2007), at www.iupui.edu/~eugenics/events.htm (last visited Feb. 3, 2009) (symposium schedule); Press Release, Indiana University School of Medicine, Symposium and Exhibit Recognize 100 Year Anniversary of Indiana Eugenics Legislation: Hoosier State Led World in Enactment of Involuntary Sterilization Laws (Feb. 28, 2007), at http://medicine.indiana.edu/news_releases/viewRelease.php4?art=646 (last visited Feb. 3, 2009).

70. See generally *Stump v. Sparkman*, 435 U.S. 349 (1978); Shari Rudavsky, *Looking at the History of Eugenics in Indiana*, INDIANAPOLIS STAR, Apr. 13, 2007, at Metro & State 1.

state capitol, where a resolution denouncing eugenics was passed, based on the Virginia model.⁷¹

71. The text of the Indiana resolution read:

A CONCURRENT RESOLUTION to mark the centennial of Indiana's 1907 eugenical sterilization law and to express the regret of the Senate and House of Representatives of the 115th Indiana General Assembly for Indiana's experience with eugenics.

Whereas, On April 27, 1907, Indiana enacted our nation's first eugenical sterilization law, which mandated the sterilization of persons who were physically or developmentally disabled, mentally ill, or who had committed crimes;

Whereas, The goal of the now-discredited eugenics movement was to provide a simple solution to the complex issues of physical disorders, mental illness, developmental disabilities, and changing social conditions by eliminating what the movement's supporters considered to be hereditary flaws through selective reproduction;

Whereas, In the 1921 case of *Smith v. Williams*, the Indiana Supreme Court declared the state's 1907 law unconstitutional;

Whereas, In a landmark 1927 decision, the United States Supreme Court upheld Virginia's involuntary sterilization statute in an opinion by Justice Oliver Wendell Holmes;

Whereas, Following the U.S. Supreme Court precedent, Indiana enacted a new sterilization law in 1927 authorizing the compulsory sterilization of persons living in a state institution;

Whereas, Indiana involuntarily sterilized some 2,500 people, while more than 65,000 people were sterilized under similar laws in 30 other states during the same period;

Whereas, Eugenics legislation devalued the sanctity of human life, placed claims of scientific benefit over human dignity, and denied the inalienable rights recognized by our Founding Fathers;

Whereas, Eugenics legislation targeted the most vulnerable among us, including the poor and racial minorities, wrongly dehumanizing them under the authority of law and for the claimed purpose of public health and the good of the people;

Whereas, In the past five years, several other states, including Virginia, Oregon, North Carolina, and California, have publicly repudiated their involvement in the eugenics movement; and

Whereas, 2007 marks the centennial of Indiana's eugenical sterilization law, the first such law in the United States: Therefore,

Be it resolved by the Senate of the General Assembly
of the State of Indiana, the House of Representatives concurring:

SECTION 1. That the Indiana General Assembly hereby expresses its regret over Indiana's role in the eugenics movement in this country and the injustices done under eugenic laws.

SECTION 2. That the General Assembly urges the citizens of Indiana to become familiar with the history of the eugenics movement in the belief that a more educated and enlightened population will repudiate the many laws passed in the name of eugenics and reject any such laws in the future.

S. Con. Res. 91, 115th Gen. Assemb., 1st Reg. Sess. (Ind. 2007) (enacted).

About the same time as the Indiana events were taking place, Georgia State Representative Mary Margaret Oliver introduced a resolution condemning her state's involvement with eugenics.⁷² Similarly, North and South Carolina had already officially repudiated eugenics.⁷³ Virginia, Oregon, and California had done so as well.⁷⁴ A legislative statement from Georgia would put the last state to pass a sterilization law on the record renouncing eugenics.⁷⁵

72. See Mary Margaret Oliver, MMO Third Email Newsletter – 2007 General Assembly Session, Feb. 12, 2007, at marymargaretoliver.org/media.html (last visited Feb. 3, 2009); see also Jeremy Redmon, *Apology Asked for Sterilizations State Required*, ATLANTA JOURNAL-CONST., Feb. 2, 2007, at 1A [hereinafter Redmon, *Apology Asked for Sterilizations*]; Jeremy Redmon, *Legislature Considers Apology for State's Role in Eugenics Movement*, ATLANTA JOURNAL-CONST., Feb. 1, 2007, at www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/02/01/legislature_con.html (last visited Feb. 3, 2009) [hereinafter Redmon, *Legislature Considers Apology*].

73. See Kevin Begos et al., *Easley Apologizes to Sterilization Victims*, WINSTON-SALEM J., Dec. 13, 2002, at A1; Tim Smith, *Hodges Offers Apology to Sterilization Victims*, GREENVILLE NEWS, Jan. 9, 2003, at 2B.

74. See Paul A. Lombardo, *Facing Carrie Buck*, HASTINGS CTR. REP., Mar.-Apr. 2003, at 14, 16, 17 & nn.19-20; Lombardo, *Taking Eugenics Seriously*, *supra* note 67, at 200 & n.56 (quoting the text of Virginia Governor Mark Warner's apology).

75. The text of the original eugenics apology introduced by Representative Oliver read:
A RESOLUTION

Expressing profound regret for Georgia's participation in the eugenics movement in the United States and marking the centennial of eugenic sterilization in the United States; and for other purposes.

WHEREAS, in the early 20th century, a pseudo-scientific movement called eugenics gained popularity in the United States and advocated the improvement of the human race by using selective breeding to eliminate supposed hereditary flaws such as mental disability and physical deformity; and

WHEREAS, in 1907, Indiana became the first state to enact a eugenics based sterilization law, mandating the sterilization of "confirmed criminals, idiots, rapists, and imbeciles"; and

WHEREAS, eventually more than 30 states enacted similar compulsory sterilization laws resulting in the involuntary sterilization of more than 65,000 individuals in the United States; and

WHEREAS, the Supreme Court sanctioned the practice of compulsory sterilization in an infamous 1927 decision by Justice Oliver Wendell Holmes in which the court upheld Virginia's sterilization of a young woman in a mental health facility on the grounds that "three generations of imbeciles [were] enough"; and

WHEREAS, in 1937, Georgia created a State Board of Eugenics and authorized the involuntary sterilization of Georgia's patients in state mental health facilities, as well as Georgia inmates in state prisons and reformatories; and

WHEREAS, even though Georgia was the last state to enact a sterilization law, it performed the fifth largest number of sterilizations in the nation, sterilizing approximately 3,300 of its citizens between 1937 and 1970, the year the law was repealed; and

The *Atlanta Journal Constitution* joined in the public education on eugenics with a series of articles surveying the history of eugenics in Georgia.⁷⁶ Cynthia Tucker, who won the 2007 Pulitzer Prize for Commentary, supported the legislative measure in one of her columns.⁷⁷ But the resolution hit a snag when partisan considerations surfaced.⁷⁸ Sharon Cooper, the Republican chair of the Georgia House of Representatives committee to which the resolution was referred, announced that she would not hold hearings nor take a vote on the eugenics measure,

WHEREAS, more compulsory sterilizations were performed in Georgia between 1937 and 1970 than in any other state in the nation except North Carolina; and

WHEREAS, in addition to compulsory sterilization, Georgia and many other states enacted eugenics related legislation that attempted to preserve "racial integrity" by banning interracial marriage; and

WHEREAS, Georgia prohibited interracial marriages for 40 years, from 1927, when it enacted its antimiscegenation law, to 1967, when the Supreme Court invalidated all such laws in its landmark *Loving v. Virginia* decision; and

WHEREAS, eugenics legislation targeted the most vulnerable populations in the United States, including the disabled, the incarcerated, the poor, the members of racial and ethnic minorities, and all others viewed as "genetically unfit" and provided a false scientific rationale for discriminatory and racist practices; and

WHEREAS, despite the harm done to many thousands of Americans in the name of eugenics, the eugenics movement is largely forgotten today; and

WHEREAS, in the past five years, several other states, including Virginia, Oregon, North Carolina, and California, have publicly repudiated their involvement in the eugenics movement; and

WHEREAS, the year 2007 marks the centennial of eugenic sterilization in the United States and the 70th anniversary of the passage of Georgia's sterilization law.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that the members of this body express their profound regret for Georgia's participation in the eugenics movement and the injustices done under eugenics laws, including the involuntary sterilization of Georgia citizens.

BE IT FURTHER RESOLVED that the members of this body hereby support the full education of Georgia citizens about the eugenics movement in order to ensure that a more enlightened population repudiates the intolerance and bigotry that formed the basis of American eugenics laws and rejects similar laws in the future.

BE IT FURTHER RESOLVED that the Clerk of the House of Representatives is authorized and directed to transmit an appropriate copy of this resolution to the public and the press.

H.R. Res. 122, 149th Gen. Assemb., Reg. Sess. (Ga. 2007).

76. See, e.g., Gayle White, *The Horror of Forced Sterilization*, ATLANTA JOURNAL-CONST., Feb. 4, 2007, at Metro.

77. Cynthia Tucker, Editorial, *Apology for Sterilizations Is Necessary*, ATLANTA JOURNAL-CONST., Feb. 7, 2007, at 15A.

78. Redmon, *Apology Asked for Sterilizations*, supra note 72; Redmon, *Legislature Considers Apology*, supra note 72.

and that the measure would likely die in committee.⁷⁹ In fact, most bills authored by Democrats like Oliver stood a poor chance of making it through the Republican dominated legislature.⁸⁰ But before public discussion of the eugenics resolution had settled, Republican Senator David Shafer decided to join the campaign to highlight Georgia's eugenic history.⁸¹ His resolution repeated much of the same historical information that Oliver's bill had contained, with two interesting differences.⁸²

First, Shafer eliminated any mention of the then eighty year old Georgia law that outlawed interracial marriage on eugenic grounds.⁸³ More surprising yet was the background information that Shafer chose to emphasize in his measure. He highlighted the origins of eugenic theory as an "outgrowth of Darwinian evolutionary theory" crafted by Darwin's relative, Francis Galton.⁸⁴ The eugenicists crafted methods to eliminate unwanted people in future generations, Shafer claimed, including "selective breeding and birth control".⁸⁵ Building on the Darwin/Galton link, Shafer then emphasized what he called "the application of Darwinian principles" as a hallmark of eugenic advocacy, and faulted "so-called 'progressive' academicians, scientists, politicians, and newspaper editors" for lending their endorsement to eugenic legislation.⁸⁶ Eugenic legislation was often

79. See Redmon, *Apology Asked for Sterilizations*, *supra* note 72; Redmon, *Legislature Considers Apology*, *supra* note 72.

80. See, e.g., *Legislature 2007: Legislative Briefs*, ATLANTA JOURNAL-CONST., Feb. 7, 2007, at 4B; 149th General Assembly of the State of Georgia (showing that the legislature was sixty-one percent Republican).

81. Jeremy Redmon, *Legislature 2007: Resolution 'Regrets' Role in Sterilization*, ATLANTA JOURNAL-CONST., Feb. 20, 2007, at 5B.

82. S. Res. 247, 149th Gen. Assemb., Reg. Sess. (Ga. 2007).

83. Compare H.R. Res. 122, 149th Gen. Assemb., Reg. Sess. (Ga. 2007) ("WHEREAS, in addition to compulsory sterilization, Georgia and many other states enacted eugenics related legislation that attempted to preserve 'racial integrity' by banning interracial marriage; and WHEREAS, Georgia prohibited interracial marriages for 40 years, from 1927, when it enacted its anti-miscegenation law, to 1967, when the Supreme Court invalidated all such laws in its landmark *Loving v. Virginia* decision"); with S. Res. 247, 149th Gen. Assemb., Reg. Sess. (Ga. 2007) (Shafer's Resolution, which only discusses Georgia's sterilization law).

84. S. Res. 247, 149th Gen. Assemb., Reg. Sess. (Ga. 2007) ("WHEREAS, the so-called science of eugenics emerged in the late 19th century as an outgrowth of Darwinian evolutionary theory, first advanced by anthropologist and geneticist Francis Galton, a cousin of Charles Darwin...").

85. *Id.* ("WHEREAS, in the early 20th century, this pseudo-scientific movement gained popularity in the United States and advocated the improvement of the human race by the application of Darwinian principles to eliminate supposed hereditary flaws such as mental disability and physical deformity and to alleviate human suffering through selective breeding and birth control . . .").

86. *Id.* ("WHEREAS, in the early 20th century, this pseudo-scientific movement gained popularity in the United States and advocated the improvement of the human race by the

adopted, Shafer noted, despite “religious objections that such matters ‘ought to be left to God’”.⁸⁷

Critics emerged to dispute Shafer’s concentration on Darwin as the fount of eugenic motives.⁸⁸ Blaming eugenics almost entirely on Darwin seemed historically simplistic, and ignored the many ways that the eugenics movement became popular by borrowing from existing lines of thought, including nativism, racism, the temperance movement, the anti-prostitution movement, or even religious sentiment.⁸⁹ But Shafer’s language won the support of his colleagues in the Georgia Senate and was adopted in a 2007 resolution.⁹⁰

application of Darwinian principles to eliminate supposed hereditary flaws such as mental disability and physical deformity and to alleviate human suffering through selective breeding and birth control; and

WHEREAS, eugenics was endorsed by so-called ‘progressive’ academicians, scientists, politicians, and newspaper editors, often over religious objections that such matters ‘ought to be left to God’...”).

87. *Id.* (“WHEREAS, eugenics was endorsed by so-called ‘progressive’ academicians, scientists, politicians, and newspaper editors, often over religious objections that such matters ‘ought to be left to God’...”).

88. See, e.g., Lee Raudonis, Editorial, *Slavery Apology: Slap at Charles Darwin Goes Way Out on a Limb*, ATLANTA JOURNAL-CONST., Mar. 13, 2007, at 11A.

89. It was common, for example, for eugenicists to quote the Bible as a justification for eugenic laws, saying that the declaration from the *Book of Exodus* that the sins of the father are visited upon the children was a perfect summary of how bad heredity created generations of faulty families. See *Exodus* 34:6-7 (“[6]Thus the Lord passed before him and cried out, ‘The Lord, the Lord, a merciful and gracious God, slow to anger and rich in kindness and fidelity, [7] continuing his kindness for a thousand generations, and forgiving wickedness and crime and sin; yet not declaring the guilty guiltless, but punishing children and grandchildren to the third and fourth generation for their fathers’ wickedness!’). According to Dennis L. Durst, Edith Smith Davis, Superintendent of The Woman’s Christian Temperance Union (WCTU) Scientific Temperance Department, declared: “[t]hat there is nothing new under the sun receives confirmation in the fact that the law of Moses is the law of Eugenics—that the sins of the fathers shall be visited upon the children unto the third and fourth generation. Likewise the children shall have health and happiness whose parents have lived according to the law of life which is the law of God.” Dennis L. Durst, *Evangelical Engagements with Eugenics, 1900-1940*, ETHICS & MEDICINE, Summer 2002, at 52 n.6 (quoting EDITH SMITH DAVIS, A COMPENDIUM OF TEMPERANCE TRUTH 116 (1916)).

90. Senator Shafer’s Eugenics Resolution, as passed by the Georgia Senate on Mar. 27, 2007:

A RESOLUTION

Expressing profound regret for Georgia’s participation in the eugenics movement in the United States and marking the centennial of the first eugenic sterilization law in the United States; and for other purposes.

WHEREAS, the so-called science of eugenics emerged in the late 19th century as an outgrowth of Darwinian evolutionary theory, first advanced by anthropologist and geneticist Francis Galton, a cousin of Charles Darwin; and

WHEREAS, in the early 20th century, this pseudo-scientific movement gained popularity in the United States and advocated the improvement of the human race by the application of Darwinian principles to eliminate supposed hereditary flaws such as mental disability and physical deformity and to alleviate human suffering through selective breeding and birth control; and

WHEREAS, eugenics was endorsed by so-called "progressive" academicians, scientists, politicians, and newspaper editors, often over religious objections that such matters "ought to be left to God"; and

WHEREAS, in 1907, Indiana became the first state to enact a eugenics based sterilization law, mandating the sterilization of "confirmed criminals, idiots, rapists, and imbeciles"; and

WHEREAS, eventually more than 30 states enacted similar compulsory sterilization laws, resulting in the forced sterilization of more than 65,000 individuals in the United States; and

WHEREAS, the Supreme Court sanctioned the practice of compulsory sterilization in the infamous 1927 decision by Justice Oliver Wendell Holmes in which the court upheld Virginia's sterilization of a young woman in a mental health facility on the grounds that "three generations of imbeciles [were] enough"; and

WHEREAS, with the editorial support of *The Atlanta Constitution*, the Georgia General Assembly passed a eugenics law in 1935, but that law was vetoed by Governor Eugene Talmadge; and

WHEREAS, in 1937, after Governor Talmadge had left office, Georgia enacted a new law creating the State Board of Eugenics and authorizing the compulsory sterilization of Georgia's patients in state mental health facilities as well as Georgia inmates in state prisons and reformatories; and

WHEREAS, Georgia's eugenics law remained on the books until 1970; and

WHEREAS, more compulsory sterilizations were performed in Georgia between 1937 and 1970 than in any other state in the nation except North Carolina; and

WHEREAS, eugenics legislation devalued the sanctity of human life, placed claimed scientific benefit over basic human dignity, and denied the God given rights recognized by our Founding Fathers; and

WHEREAS, eugenics legislation targeted the most vulnerable among us, including the poor and racial minorities, wrongly dehumanizing them under the color of law and for the claimed purposes of public health and good; and

WHEREAS, in the past five years, several other states, including Virginia, Oregon, North Carolina, and California, have publicly repudiated their involvement in the eugenics movement; and

WHEREAS, the year 2007 marks the centennial of the first eugenic sterilization in the United States and the 70th anniversary of the passage of Georgia's sterilization law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE that the members of this body express their profound regret for Georgia's participation in the eugenics movement and the injustices done under eugenics laws, including the forced sterilization of Georgia citizens.

BE IT FURTHER RESOLVED that the members of this body hereby support the full education of Georgia citizens about the eugenics movement in order to foster a respect for the fundamental dignity of human life and the God given rights recognized by our Founding Fathers.

V. DARWIN, EUGENICS, AND THE CULTURE WARS

Senator Shafer's focus on Darwin was not an isolated event. Close attention to internet commentary during this time revealed an interesting trend. One feature of that trend is represented by the writing of John G. West, former professor of political science and now Senior Fellow at the Discovery Institute in Seattle.⁹¹ West's book, *Darwin Day in America: How Our Politics and Culture Have Been Dehumanized in the Name of Science*, is an attempt to link proponents of the Darwinian theory of evolution with eugenics and many other modern ills, such as abortion.⁹² West's argument describes Darwin as the source of modernist "materialism," which excludes the spiritual from the public sphere and pits evolution against "creation science" and theories of intelligent design.⁹³ West also credits early 20th Century Progressive movement with much that was wrong with eugenics.⁹⁴

West attacks the use of Darwinism as the wellspring of eugenics, and he regularly invokes the case of *Buck v. Bell* as a dramatic example of how the eugenics movement employed evolutionary theory to achieve horrific ends.⁹⁵ In early 2008, West discussed the *Buck* case during a lecture at the Washington, D.C. Family Research Council on Darwinian Fundamentalism.⁹⁶ He described the *Buck* case as an "example of Darwin's theories applied destructively," and repeated the sordid details of the case, including Carrie Buck's early life in foster care, her mother's institutionalization, her rape, and her subsequent diagnosis as "feebleminded."⁹⁷ One sympathetic reviewer summarized West's presentation, noting how he offered "numerous illustrations of how

BE IT FURTHER RESOLVED that the Secretary of the Senate is authorized and directed to transmit an appropriate copy of this resolution to the public and the media. S. Res. 247, 149th Gen. Assemb., Reg. Sess. (Ga. 2007); for status history and information on voting, see SR 247 – Eugenics; Express Profound Regret for Georgia's Participation, at www.legis.ga.gov/legis/2007_08/search/sr247.htm (last visited Feb. 3, 2009).

91. See generally *Darwin Day in America* – About the Author, Biography of John West, at www.darwindayinamerica.com/author/ (last visited Feb. 3, 2009); Discovery Institute, About Discovery, at www.discovery.org/about.php (last visited Feb. 3, 2009); Center for Science and Culture, Top Questions, at www.discovery.org/csc/topQuestions.php (last visited Feb. 3, 2009).

92. See JOHN G. WEST, *DARWIN DAY IN AMERICA: HOW OUR POLITICS AND CULTURE HAVE BEEN DEHUMANIZED IN THE NAME OF SCIENCE* 128-33, 156-60 (2007).

93. *Id.* at xiv-xvii, 225-30, 234-38.

94. *Id.* at 123-26.

95. *Id.* at 137-39; *Buck v. Bell*, 274 U.S. 200 (1927).

96. John G. West, *Darwin Day in America?* Witherspoon Lecture at the Family Research Council (Feb. 12, 2008) [Hereinafter *Darwin Day*], webcast at http://www.frcblog.com/2008/02/video_of_john_g_wests_lecture_1.html (last visited Jan. 16 2009).

97. West, *Darwin Day*, *supra* note 96; see also WEST, *supra* note 92, at 137-39 (describing the plight of Carrie Buck).

Darwinian advocates, such as former Supreme Court Justice Oliver Wendell Holmes Jr., have taken Darwin's theories and applied them over the years to situations they did not necessarily relate to."⁹⁸

The recent Ben Stein documentary film *Expelled: No Intelligence Allowed*, a polemic on the purported exclusion of the so-called "intelligent design" perspective and other religious viewpoints from public debate, provided another vehicle for tying Darwin to the origins of eugenics.⁹⁹ Conservative activist and one-time Presidential candidate Gary Bauer¹⁰⁰ noted that

[t]he most compelling part of 'Expelled' is its investigation into the historical and intellectual link between Darwinism and the eugenics movement. Eugenics attempts to 'assist' evolution in order to move the human race forward into a new and improved world. Central to social Darwinism are the ideas of natural selection and survival of the fittest, which eugenicists believe can be helped along by controlling birth patterns. Stein offers a striking reminder of where such utilitarian thinking can lead when he visits a death camp in Hadamar, Germany, where thousands of disabled people and other 'undesirables' or 'useless eaters' were exterminated during the Nazi regime.¹⁰¹

Comments like Bauer's typify a pattern of argument that relies on several simple declarations to link Darwin with everything evil. First, it is said, Charles Darwin believed in a godless creation, and his theory of evolution is the foundation of an atheistic ideology.¹⁰² Second, his likeminded cousin, Francis Galton, launched the eugenics movement from a Darwinian perspective. Third, others like Margaret Sanger supported eugenics and tried to force birth control onto the poor and disabled as a

98. Katherine Kipp, *Author Critiques Darwin's 'Terrible Ideas'*, FLORIDA BAPTIST WITNESS, Feb. 14, 2008, at www.floridabaptistwitness.com/8431.article (last visited Feb. 3, 2009).

99. *EXPULSED: NO INTELLIGENCE ALLOWED* (Premise Media Corporation 2008).

100. Gary L. Bauer is the president of American Values. The American Values website describes the organization as "a non-profit organization committed to uniting the American people around the vision of our Founding Fathers. . . . American Values serves to remind the public of the conservative principles that are so fundamental to the survival of our nation and to bring support and ideas to policy makers and empower our elected officials to have the support they need to do what is right, noble and good. . . . American Values is deeply committed to defending life, traditional marriage and equipping our children with the values necessary to stand against liberal education and cultural forces." American Values, *About American Values*, at www.amvalues.org/about.php (last visited Feb. 3, 2009).

101. Gary Bauer, *Intelligence 'Expelled' from Evolution Debate*, HUMAN EVENTS.COM, Feb. 18, 2008, at www.humanevents.com/article.php?id=25046 (last visited Feb. 3, 2009). For a dramatically contrasting review of *Expelled* by movie critic Roger Ebert, see Win Ben Stein's Mind, http://blogs.suntimes.com/ebert/2008/12/win_ben_steins_mind.html (Dec. 3, 2008, 12:25 CST).

102. See, e.g., WEST, *supra* note 92, at 37-41.

way of carrying out eugenic aims. Finally, Hitler also believed in eugenics. Thus, the argument in a nutshell is that the ideas of Darwinian evolution led, via eugenics, to the Holocaust. Moreover, a new eugenics movement has yielded a second Holocaust in the form of pro-abortion politics that are an outgrowth of Sanger's eugenic propensities and other Progressive era trends that emphasize science over religion.

This attempt at a thesis is clearly based on a selective memory of the past and a distorted account of eugenic history. This brief essay does not permit a more extensive refutation of the line of argument I have described, but a few examples of what is absent from this account will suggest how deficient it is. For example, the anti-Darwinians could have pointed out that the first six presidents of the twentieth century—Theodore Roosevelt, William Howard Taft, Woodrow Wilson, Warren Harding, Calvin Coolidge and Herbert Hoover—all had taken positions supporting some kind of eugenic policy.¹⁰³ Coolidge signed a federal statute that remained in place for over forty years, limiting immigration of Jews and southern Europeans on eugenic grounds.¹⁰⁴ American laws limiting immigration on "racial" grounds were praised by Hitler in his book, *Mein Kampf*.¹⁰⁵ And Herbert Hoover was one of the most prominent supporters of the 1921 Second International Congress of Eugenics.¹⁰⁶ But whatever other shortcomings they may have had, Calvin Coolidge and Herbert Hoover are hardly responsible for the Holocaust.¹⁰⁷

103. See Paul A. Lombardo, *Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom*, 13 J. CONTEMP. HEALTH L. & POL'Y 1, 1 & n.1 (1996); see, e.g., THOMAS F. GOSSETT, RACE: THE HISTORY OF AN IDEA IN AMERICA 404-05 (1965) (discussing Harding's 1920 campaign speech enunciating racial differences in the context of immigration restriction laws, and Coolidge's popular 1921 article, when he was Vice-President, where he argued "that Nordics deteriorate when mixed with other races."); JAMES W. TRENT, JR., INVENTING THE FEEBLE MIND: A HISTORY OF MENTAL RETARDATION IN THE UNITED STATES 173 (1994) (discussing then New Jersey Governor Woodrow Wilson's enthusiastic support of the legislature's authorization of mandatory eugenic sterilization for "certain categories of adult feeble minds."); Lombardo, *Taking Eugenics Seriously*, *supra* note 67, at 208-09, n.114 (discussing an article written by Roosevelt embracing eugenics); CHASE, *supra* note 20, at 19-20 (discussing then Secretary of Commerce Hoover's involvement with the Second International Congress of Eugenics, held in New York in 1921).

104. Immigration Act of 1924, ch. 190, 43 Stat. 153 (1924); see CHASE, *supra* note 20, at 300-01.

105. Hitler railed against automatic citizenship for "every Jewish or Polish, African or Asiatic child" born in Germany as "thoughtless" and "hare-brained". ADOLF HITLER, *MEIN KAMPF* 438-39 (Ralph Manheim trans., 1943) (1925). America's policy of "excluding certain races from naturalization" was a law that Hitler could endorse. *Id.* at 440.

106. CHASE, *supra* note 20, at 19-20 (discussing then Secretary of Commerce Hoover's involvement with the Second International Congress of Eugenics, held in New York in 1921).

107. Charles Darwin's son Leonard Darwin was on the sponsoring committee of the Second International Congress of Eugenics in New York City in 1921. See CHASE, *supra* note

Theodore Roosevelt's eugenic sentiments are well documented and he agreed with the leaders of the movement that "society has no business to permit degenerates to reproduce their kind."¹⁰⁸ But there is no call among the anti-Darwinians for chiseling his face from Mount Rushmore. Psychologists like Louis Terman, Robert Yerkes, and Leta Stetter Hollingworth argued for using the tools of psychometrics such as IQ tests to sort school students, and all three were well known as advocates of eugenics.¹⁰⁹ But the anti-Darwinians are not heard to argue that the mental testing movement was the gateway to the Holocaust.¹¹⁰

What the anti-Darwinians didn't say was that Herbert Spencer, not Darwin, coined the terms "survival of the fittest" and "Social Darwinism."¹¹¹ Nor did they note that the proponents of sterilization in the *Buck* case did not rely once on Darwin in their arguments in court, but repeatedly invoked the theories of heredity outlined first by Gregor Mendel, a Roman Catholic monk.¹¹² Oliver Wendell Holmes Jr., author of the *Buck* opinion, based his eugenic sentiments not on Darwin, but on the writings of Thomas

20, at 277. The committee also included then secretary of commerce and later President Herbert Hoover, who presided over the stock market crash on "Black Monday" that ushered in the Depression. See *id.* West, Bauer, and their colleagues might have said that these associations prove that Darwin was responsible for the Great Depression, but that would have been similarly inaccurate.

108. Letter from Theodore Roosevelt to Charles Davenport (Jan. 3, 1913), at http://www.eugenicsarchive.org/eugenics/image_header.pl?id=1242&detailed=1 (last visited Feb. 3, 2009).

109. See, e.g., LEWIS M. TERMAN, *THE MEASUREMENT OF INTELLIGENCE: AN EXPLANATION OF AND COMPLETE GUIDE FOR THE USE OF THE STANFORD REVISION AND THE EXTENSION OF THE BINET-SIMON INTELLIGENCE SCALE* (1916); LEWIS M. TERMAN, *THE INTELLIGENCE OF SCHOOL CHILDREN: HOW CHILDREN DIFFER IN ABILITY, THE USE OF MENTAL TESTS IN SCHOOL GRADING, AND THE PROPER EDUCATION OF EXCEPTIONAL CHILDREN* (1919); Robert M. Yerkes, *A Point Scale for Measuring Mental Ability*, 1 *PROC. NAT'L ACAD. SCI.* 114 (1915); Robert M. Yerkes, *The Benet Versus the Point Scale Method of Measuring Intelligence*, 1 *J. APP. PSYCHOL.* 111 (1917); LEON J. KAMIN, *THE SCIENCE AND POLITICS OF IQ 10* (1974) (noting that Lewis Terman and Robert Yerkes were both pioneers of the Mental Testing Movement and supporters of the Eugenics Movement); LETA S. HOLLINGWORTH, *GIFTED CHILDREN: THEIR NATURE AND NURTURE* (1926); LETA S. HOLLINGWORTH, *CHILDREN ABOVE 180 IQ* (1942); Selden, *Transforming Better Babies into Fitter Families*, *supra* note 17, at 204-05 (noting how "Hollingworth framed the causes of varying levels of student performance in eugenic terms").

110. The federal No Child Left Behind legislation, for example, is also based on extensive reliance on testing, yet that legislation is not condemned by the anti-Darwinians. See No Child Left Behind Act of 2001, Pub. L. No. 107-110 § 1116, 115 Stat. 1425, 1478 (2002) (detailing the academic assessment procedures required under the Act).

111. HERBERT SPENCER, *THE PRINCIPLES OF BIOLOGY* 530-31 (1910) (1864); see WEST, *supra* note 92, at 106-07.

112. *Buck v. Bell*, 274 U.S. 200 (1927); see generally MENDEL, *supra* note 11.

Malthus,¹¹³ who complained a century before Darwin that imprudent charity was a drag on civilization.¹¹⁴ An accurate account of U.S. eugenics could also have quoted Frederick Winslow Taylor, whose ideas of industrial efficiency were extremely important to the Progressive era and were often recited as justification for eugenic measures.¹¹⁵

Blaming Margaret Sanger for the eugenics movement is similarly misleading. Certainly Sanger supported some eugenic aims, and was not above voicing her contempt for the poor, disabled and minorities.¹¹⁶ But she never held a leadership post within the eugenics movement, because leaders like Charles Davenport¹¹⁷ were fearful of associating with someone so radical, and for years had argued strenuously against her primary objective: widespread availability of birth control.¹¹⁸

Moreover, identifying eugenics with abortion ignores the near complete absence of support for abortion among leaders in the eugenics movement. Charles Davenport himself, in one of first and most widely read texts of the eugenics movement, *Heredity in Relation to Eugenics*, explained unequivocally that while his eugenic program encompassed "control by the state of the propagation of the mentally incompetent", it also ruled out the "destruction of the unfit either before or after birth."¹¹⁹ Harry Laughlin, Davenport's first lieutenant in the eugenics cause, and author of the Model Sterilization Act that provided the foundation for the law upheld in *Buck v. Bell*, voiced similar sentiments. "Preventing the procreation of defectives rather than destroying them before birth, or in infancy, or in the later periods

113. Holmes told his friend Harold Laski: "I am a devout Malthusian as you know." Letter from Oliver Wendell Holmes, Jr. to Harold J. Laski (Sept. 16, 1924), in *HOLMES-LASKI LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND HAROLD J. LASKI, 1916-1935*, 658, 658 (Mark DeWolfe Howe ed., 1953).

114. See generally T. R. MALTHUS, *AN ESSAY ON THE PRINCIPLE OF POPULATION* (1792) (1798); CHASE, *supra* note 20, at 74-77.

115. See FREDERICK WINSLOW TAYLOR, *THE PRINCIPLES OF SCIENTIFIC MANAGEMENT* (1915) (1911); see also Amy L. Fairchild, *Policies of Inclusion: Immigrants, Disease, Dependency, and American Immigration Policy at the Dawn and Dusk of the 20th Century*, 94 *AM. J. PUB. HEALTH* 528, 529-30 (2004).

116. For example, Sanger states that "the most urgent problem today is how to limit and discourage the overfertility of the mentally and physically defective." Margaret Sanger, *The Eugenic Value of Birth Control Propaganda*, *BIRTH CONTROL REV.*, Oct. 1921, at 5, reprinted in *THE SELECTED PAPERS OF MARGARET SANGER, VOLUME 1: THE WOMAN REBEL, 1900-1928*, at 321 (Esther Katz ed., 2003).

117. See generally CHASE, *supra* note 20, at 114-18.

118. *Id.* at 55 (noting that Davenport declined Sanger's formal invitation to participate as vice-president in 1925's Birth Control Conference, not wishing to appear as a supporter of the Birth Control League or the conference, lest it confuse the distinction between eugenics and birth control).

119. Charles Benedict Davenport, *Heredity in Relation to Eugenics* 4 (1915) (1911).

of life, must be the aim of modern eugenics” said Laughlin.¹²⁰ Harvey Jordan, an acolyte of Davenport’s, argued strenuously for eugenic sterilization, with no less vehemence and contempt for the poor and disabled than Sanger.¹²¹ Yet Jordan also argued just as strongly against eugenic euthanasia,¹²² and Jordan never spoke out in favor of abortion.¹²³ Claiming that all who put on the mantle of eugenics are responsible for social movements that crystallized long after they were dead requires a cramped idea of eugenics and asks us to believe that anyone who was identified as a “eugenicist” was equivalent to everyone else who welcomed that label. Such an assertion is clearly false. But focusing on Darwin, Galton, and Margaret Sanger is more useful for the anti-Darwinians. That focus allows them to link evolution, abortion, and eugenics and taunt liberals who adopt the reform posture of old Progressives.¹²⁴

We need to remember that although it is true that Margaret Sanger spoke in favor of eugenics, echoing eugenic themes was also a ploy of evangelist preacher Billy Sunday, who at one point was described at a particularly successful revival, having spent so much time on the influences of heredity that talk of science “almost overshadowed the denunciations of sin.”¹²⁵ Neither Sanger nor Sunday can be blamed for the historical footprint left by Hitler.

120. Henry H. Laughlin, *Report of the Committee to Study and to Report on the Best Practical Means of Cutting off the Defective Germ-Plasm in the American Population*, EUGENICS REC. OFF. BULL. NO. 10A, at 55 (1914); HENRY HAMILTON LAUGHLIN, EUGENICAL STERILIZATION IN THE UNITED STATES 446-51 (1922) (detailing the Model Eugenic Sterilization Law).

121. Jordan believed that those “grossly and obviously unfit” should not be able to reproduce. See, e.g., *Plan Nation-Wide Eugenics Society*, N.Y. TIMES, Nov. 16, 1913, at 15 (quoting Harvey E. Jordan during the American Association for the Study and Prevention of Infant Mortality (AASPI) 1913 organizational meeting in Washington, D.C.). Jordan’s extensive eugenic writings included: Harvey Ernest Jordan, *Eugenics: Its Data, Scope and Promise, as Seen by the Anatomist*, in EUGENICS: TWELVE UNIVERSITY LECTURES 107 (1914); H.E. Jordan, *The Eugenic Aspect of Venereal Disease*, 3 TRANSACTIONS AM. ASS’N FOR STUDY & PREVENTION INFANT MORTALITY 156 (1912-1913); H.E. Jordan, *The Place of Eugenics in the Medical Curriculum*, in PROBLEMS IN EUGENICS: PAPERS COMMUNICATED TO THE FIRST INTERNATIONAL EUGENICS CONGRESS 396 (1912); H.E. Jordan, *Heredity as a Factor in the Improvement of Social Conditions*, 2 AM. BREEDERS’ MAG. 246 (1911).

122. See *Plan Nation-Wide Eugenics Society*, *supra* note 121 (quoting Harvey E. Jordan as stating that “[e]very child born into the world . . . must be saved, if possible” during the AASPI 1913 organizational meeting in Washington, D.C.).

123. H.E. Jordan, *Eugenics: The Rearing of the Human Thoroughbred*, 12 CLEV. MED. J. 875 (1912).

124. See, e.g., WEST, *supra* note 92, at 120-22.

125. *35,000 Hear Sunday Talk to Men Only*, N.Y. TIMES, Apr. 30, 1917, at 20; see Rev. Wm. A. Sunday, *Sermon: Chickens Come Home to Roost* (Apr. 29, 1917).

VI. CONCLUSION

We have had occasion in recent years to rediscover the history of eugenics, and it is an ugly history. The history of eugenics reminds us how fear and greed and hate can be exploited to enable bigotry to flourish against the poor, the disabled, and the merely different—and in some of the worst cases bigotry can be delivered at the point of a surgeon's scalpel or in a death camp gas chamber. Studying that history has also made it possible to revisit some of the mistakes of the past and make amends—to repudiate unjust laws once used against disabled people, and to apologize to some of the victims of those laws. Thus it is appropriate to argue for increased sensitivity to the history of disability and to point out troubling trends today suggesting that some of that history is not yet past. We may, at such times, have occasion to invoke the dark shadow of eugenics or even Hitler himself. But particularly when we are acting in service of what we would hope are our own most noble motives, we should be careful that we are not distorting history merely to make debating points, or redefining eugenics as a bludgeon to be used in crushing the political opposition.

There is a danger when we take that rediscovered history and cynically manipulate the facts it provides us with in order to run up the rhetorical score. It is possible to have reasoned arguments and heated debates about topics as controversial as race, abortion, crime, and religion—those arguments are not likely to go away any time soon. But in the ocean of ideas, eugenics was a bottom feeder, taking whatever it needed to make the case against social welfare programs, expensive institutions, and the people who lived in them. Many ideas were swept into the mix, none of them alone sufficient to account for the laws passed to advance the eugenic cause, or to explain the crimes committed in the name of eugenics. There is no inevitable link between Darwin, Sanger, or even Galton and the Holocaust, any more than there is a simple causal relationship between support for immigration restriction, sterilization, or I.Q. testing and the worst crimes of the Nazis. The moment we begin intentionally distorting historical fact to get an edge in the ongoing culture wars, we risk repeating the tactics of some master manipulators of the past. When someone wants too glibly to shout the name of Hitler as the epithet of choice with which to tar all opponents, we should remember that Hitler's own propaganda minister, Joseph Goebbels,¹²⁶ was the author of many such big lies, and the man who did the most in the twentieth century to rewrite history to fit his own agenda was Joseph Stalin. Treating eugenics merely as one of history's dirty words, without accurately exploring the context in which it came to be used, or the variety of ideas that played a part in its career, can lead to a debasement of

126. See, e.g., PROCTOR, *supra* note 60, at 79.

history itself. Such a strategy yields no long term benefit to people with disabilities or to those who would advocate for them.

