

# ‘Liberty of the Nation’: Eugenics in Australia and New Zealand and the Limits of Illiberalism

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There is now a rich and extensive historiography on eugenics in Australia, and to a lesser extent New Zealand, much of it outlining the pervasiveness of eugenic ideas and practices, emerging in the last decade of the nineteenth and first decade of the twentieth centuries and flowering in the inter-war years.<sup>1</sup> Rob Watts has seen this as ‘the age of eugenics’ in Australia and others have echoed this claim for New Zealand.<sup>2</sup> The focus of many historians has been on the importance of eugenics in the development of a range of ‘progressive’ social policies such as child welfare, infant health, marriage guidance, mental health facilities and treatments, educational testing in schools and the treatment of criminals; and also in the thinking of key Australian social reformers and politicians—people as diverse as Richard Berry, Professor of Anatomy and W.E. Agar, Professor of Zoology at Melbourne University,

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D.B. Paul et al. (eds.), *Eugenics at the Edges of Empire*,

[https://doi.org/10.1007/978-3-319-64686-2\\_2](https://doi.org/10.1007/978-3-319-64686-2_2)

Harvey Sutton, tropical disease and public health expert, Richard Arthur, child endowment advocate and Minister for Health in the NSW Bavin Government (1927–1930), birth control advocate, Lillian Goodison and feminist, Marion Piddington. Similarly, in New Zealand the list of prominent figures influenced by eugenics is impressive—Sir Māui Pōmare, Minister for Health (1923–1926), Sir Truby King, prominent child health and mental disease expert, Theodore Gray, Inspector-General of Mental Hospitals, feminists, such as Doris Clifton Gordon and Ettie Rout, and Hilda Northcroft, President of the Auckland Branch of the National Council of Women.<sup>3</sup>

The increasing interest in eugenics in Australia and New Zealand has been part of a more general growth in critical social and cultural histories of medicine, where the focus has been on medicine's role in shaping social policy, particularly with respect to 'problem populations' (criminals, delinquents, the poor, mental and intellectual disability) and how it in turn produced discourses that helped shape class, race and gender in specific imperial, colonial and post-colonial contexts. A number of historians both overseas and in Australia have noted that interwar eugenics developed a more sophisticated reform agenda, one focused on the regulation and control of the mentally deficient, usually termed 'negative eugenics', while also promoting 'progressive' social reforms, 'positive eugenics' as it is commonly called, for the improvement of those suffering social disadvantage. While there was a strong strand of environmentalist and positive approaches within reform eugenics, Ross Jones has stressed the continuing strength of hereditarian ideas, the increasing resort to rigorous segregation measures and the popularity of sterilization as a vital measure to combat social inefficiency.<sup>4</sup> In this context negative eugenics has generally been seen as a dark chapter in the history of early twentieth-century medicine, a tragic instance of medicine overreaching itself.<sup>5</sup>

The Australian and New Zealand historiography on eugenics parallels international trends. In this wider context historians have highlighted the ways eugenics both promoted positive environmentalist reforms but also supported more coercive trends, challenging long standing legal principles and practices safeguarding individual rights in the pursuit of 'national fitness'. Desmond King, for example, has argued that eugenics was at the heart of a growing illiberalism in western culture.<sup>6</sup> Prominent medical authorities, reformers and politicians, frustrated by the checks and balances of liberal political cultures and

the subservience of social policy to political expediency and populism, urged the State to base its deliberations on science rather than electoral success. Key reformers, doctors prominent among them, argued that certain democratic rights (liberty, habeas corpus, free association, the presumption of innocence) be set aside in particular contexts and for specific problem populations in the national interest. Ironically, Joseph Goebbels captured the transnational mood of reformers rather well in his address to foreign delegates at the 1935 International Prison Congress in Berlin, arguing that Germany was now 'opposed to liberalism' because it focuses on the individual, whereas 'we focus on the nation ... liberty of the nation'.<sup>7</sup>

In a transnational context, the evidence for illiberalism is apparent, most clearly in relation to the compulsory incarceration of many deemed irredeemable—the 'racially' or 'mentally unfit'—regardless of the threat they posed to the wider society or the severity of their offence (or even the existence of an offence in the first place). By the 1920s, most western nations and states had mental-defectives legislation, facilitating the permanent segregation of the 'unfit' in specialized institutions. Britain had a comprehensive system after the 1913 Mental Deficiency Act, as did many European nations and states in the USA. They were also increasingly common in parts of Asia and Latin America.<sup>8</sup> Forms of eugenic segregation were commonplace. In addition to the armoury of mental-defectives legislative provisions around the world, there were related mechanisms with eugenic intent, such as the increasingly common resort to 'habitual criminal' provisions in some jurisdictions, notably the UK and some parts of the USA, where offenders who committed a series of offences (commonly three felonies) could be confined for longer periods (well beyond the standard sentence for the relevant offence) to allow authorities the opportunity to assess whether the criminal was irredeemable and might warrant permanent incarceration. In some contexts, such as New York and New England, such experiments had a 'progressive' therapeutic impulse, but where inmates failed to respond the prospect of permanent incarceration after committing a criminal offence loomed.<sup>9</sup>

The major difference between nations was over sterilization. The list of states and nations introducing sterilization legislation before 1939 is impressive—Germany, Sweden, Norway, Denmark, Japan, Puerto Rico, Panama, over 30 states of the USA and two provinces in Canada, among others. And lest we think these are questions of anti-quarian interest, it is important to note that compulsory sterilization is

still practiced in the Czech Republic, Peru and Russia to name but a few places. Between 2006 and 2010, 150 women in Californian prisons were also sterilized.<sup>10</sup> Equally noteworthy, however, is the list of those states and nations that failed to pass sterilization legislation, despite intense lobbying by influential citizens to do so—most notably Britain and its Dominions, with the exception of those two provinces in Canada (Alberta and British Columbia).

In the Antipodes, despite the positive and environmentalist focus of many eugenisists, the same trends towards illiberalism are also apparent. Britain set the pace for the permanent segregation of the mentally deficient with the 1908 Royal Commission into the feeble-minded, which subsequently led to the 1913 Act enabling permanent segregation under certain conditions. Australia followed suit. In 1913, South Australia also enacted mental defectives legislation and by 1920, Tasmania had legislative provisions for the detention of the mentally deficient, modelled on the British precedent, creating an independent Board of Control for mental defectives and establishing a number of institutions under its control.<sup>11</sup> Both Victoria and NSW, however, were comparatively tardy, failing to pass similar legislation until 1939. In Victoria, there were three major attempts, in 1926, 1929 and 1939, to pass comprehensive eugenic legislation involving the creation of an overarching independent board of control governing the segregation of mental defectives. The first two bills made it through the Legislative Assembly and the third was passed by both the lower and upper houses but was never proclaimed, the outbreak of war creating more pressing concerns.<sup>12</sup> Similarly, in NSW legislative efforts to segregate ‘defectives’ floundered before an Act was passed in 1939. As a result, both states had to juggle an imperfect system whereby juveniles could be detained in mental defective institutions controlled by the Education Department until the age of eighteen when they then had to be released or kept under state control through a different mechanism. For bureaucrats and state authorities the way around this legislative constraint was to certify as insane those reaching the age of 18 deemed to be a potential eugenic and social threat. Thus, through the awkward framework of two acts, and two institutional systems, Victoria and NSW managed a process of permanently confining some of the more severe cases of mental deficiency, frustrating eugenists who argued that the certification of insanity test was too high a bar enabling many feeble-minded to return to society.<sup>13</sup> Across the Tasman Sea, the passage of eugenic legislation sanctioning segregation was comparatively less

complicated. New Zealand passed a 1911 Mental Defectives Act and a further amendment Act in 1928, which facilitated the permanent segregation of those deemed mentally defective.<sup>14</sup>

While NSW might have been slow in comparison to some other Australian states and New Zealand, in other areas of eugenic legislation, notably the extended incarceration of supposedly 'irredeemable' criminals, it was ahead. The NSW Parliament passed a Habitual Criminals Act in 1905, three years before similar legislation in Britain, to confine those convicted of a third felony offence for an extended period, well beyond the normal sentence for such a crime. The aim was to observe 'hardened' criminals for longer periods to see if they demonstrated signs of reform, and if not to keep them incarcerated to protect society and prevent their propagation.<sup>15</sup> Similarly, Australian police forces and criminal justice systems eagerly embraced new techniques, such as anthropometric measurements and fingerprinting, for identifying criminals. Fingerprinting, a sophisticated form of criminal identification, an improvement on older Bertillon tests, was pioneered first in British India before being introduced to Britain itself after 1905 and various Australian states quickly adopted this new technique for identifying the 'criminal class'.<sup>16</sup> The colonial periphery was by no means always behind, and, in some contexts, was ahead of, the imperial centre in the rush to illiberalism. Nonetheless, what is striking is that Britain and its Dominions, with the exception, as indicated above, of two Canadian provinces, resisted the on-rush of enthusiasm for sterilization sweeping many parts of the West, despite numerous influential citizens, scientists, doctors and politicians earnestly supporting this initiative.

In this transnational context, the failure of Britain and its Dominions to pass sterilization legislation is striking. What were the aspects of British and Dominion political culture that militated against the efforts of influential citizens to enact sterilization of the mentally defective? Was it the relative strength of positive eugenics? This may have been a factor but cannot be the entire story. Positive eugenics was also evident in many states and nations that passed sterilization legislation. Here there seems to be two important lines of inquiry. One, and the dominant one in the historiography, is that of presence: the who, why, how and when, of eugenics. Who took it up, why did it prosper, how did it impact on national politics, and when was it influential? These have all been important questions in the Australian and New Zealand historiography and we now have, as suggested above, a very good idea about the influence,

impact and reach of eugenic ideas in Australian and New Zealand. Second, and more importantly, is the question of absence. When we take up the problem of eugenics in a transnational context, what is striking are the differences in impact, most clearly evident in those states that enacted sterilization legislation and those that didn't. In other words, in an age of illiberalism, why did liberalism survive and inhibit the on-rush of anti-democratic sentiment in some nations and not in others? It is this second question that is the focus of this chapter. Why sterilization failed stands to offer crucial insights into the limits of illiberalism, the political institutions that stymied such tendencies and the specific national, social, cultural, political and economic contexts and factors that differentiated nation states in relation to the question of eugenic legislation.

### THE CAMPAIGN FOR STERILIZATION

There were a number of influential advocates for sterilization in the Antipodes. Many of the key eugenics organizations in Australia, such as the Eugenics Society, the Victorian Eugenics Society, Australian Natives Association and the Racial Hygiene Association, had members and supporters of the campaign to legalize sterilization of the 'defective classes'. In pamphlets, talks, meetings and journal articles, prominent members of these organizations such as Victor Wallace and Richard Berry, Angela Booth, Sir James Barrett, Sir Benjamin and Lady Fuller, and leading politicians such as Richard Arthur, Stanley Argyle and others, pressed the case for sterilization, in an effort to alert the public, and parliaments, to the threat posed by the unchecked reproduction of the 'unfit'. Their arguments were bolstered by scientific research. Prominent academics and doctors, such as Richard Berry, W.E. Agar and others, pressed the case for sterilization. Sir George Syme, in his Presidential Address to the 1923 Australasian Medical Congress, supported voluntary sterilization. The pervasiveness of eugenic ideas is even more evident in the light of the range of reform groups that embraced it and incorporated it into a wider social agenda. In Australia and New Zealand, maternal feminists and birth control advocates, like Lillian Goodisson, Ettie Rout and Marion Piddington, campaigned for marriage and infant welfare reform with a strong eugenic element.<sup>17</sup>

While the push for better legislative provisions to govern the segregation of the mentally deficient received widespread support, sterilization was more controversial. In Victoria, during the 1926 and 1929 debates

about mental defectives legislation, many advocates of the legislation, inside and outside Parliament, proclaimed the utility and importance of sterilization. Yet as Ross Jones points out, despite this support, sterilization was not actually part of the legislation before the Victorian Parliament. Even advocates were hesitant, suggesting that Australian society was not yet sufficiently mature to deal with such a policy. Stanley Argyle, one of the Parliamentary proponents of the Victorian bills felt that sterilization had to await a 'more educated society', before it could be enacted. Segregation was the higher priority.<sup>18</sup>

Nonetheless, the push for sterilization legislation gained some traction in the interwar years. In 1929, a Bill proposing a comprehensive framework and Board of Control for the management of defectives, modelled on the 1913 British and South Australian legislation, but one which also contained a clause authorizing compulsory sterilization, made it to the committee stage and the third reading in the Western Australian Parliament. Although there were critics of such 'experimental legislation', and concerns expressed that the provisions would prove costly, give too much power to the State psychologist and might potentially open up the State to a flood of 'defectives' brought by families from other parts of Australia, the Bill and the sterilization clause made it through every stage of the legislative process till the penultimate one in the upper house. The death of the chief proponent of the Bill, Dr. Athelston John Menton Saw, Member of the Legislative Council, just before the final reading, however, seems to have opened up the space for the critics to triumph. Growing concerns about the worsening economic climate empowered others to argue that the Bill could not be afforded at this time. Finally, the Government called a sudden election and Parliament was prorogued. Despite the return of the Government the Bill was never brought before the Lower House again. Sterilization may have fallen at the final hurdle in Western Australia but it came very close to enactment.<sup>19</sup>

Legislative success also came close in New Zealand. In 1924, the Reform Party (Conservative) Government of William Massey established a Committee of Inquiry into Mental Defectiveness and Sexual Offences, chaired by journalist, editor and Legislative Councillor, William Triggs. The Committee had a distinguished list of members, including Truby King, Donald McGavin, Director-General of Medical Services, J. Sands Elliot, Chairman of the New Zealand branch of the British Medical Association and Ada Patterson, Director of the Division

of School Hygiene. The 1925 Report of the Committee recommended the establishment of a Eugenics Board to oversee the management of the mentally defective, and also advocated a number of provisions for the control of mental defectives, such as segregation, the maintenance of a register of all those deemed mentally defective discharged from State institutions, immigration restrictions on the feeble-minded, prohibition of marriage for those on the Eugenics Board register, as well as sterilization in certain circumstances, particularly when parental consent could be obtained or as a condition of release for sexual offenders. A vigorous campaign of support for legislative provisions to implement the recommendations ensued. In response to the rising public interest in eugenic policies and practices the Minister for Health, Alexander Young, sent Theodore Gray, Inspector-General of Mental Hospitals, to Europe and the USA to inspect eugenic programs there. Gray's 1927 Report, *Mental Deficiency in New Zealand*, provided considerable support for a number of the measures proposed by the earlier committee, and supported sterilization in particular circumstances, especially when it was voluntary or for the control of sexual offenders.

In 1928, the Coates Reform Party Government tabled a Mental Defectives Amendment Bill containing a number of clauses, including marriage prohibition of registered persons and a sterilization provision. It faced vigorous opposition inside and outside Parliament, particularly from the Labour Party and the Catholic Church. An election was looming and, while the evidence suggested the Government was well ahead, it clearly did not want a potentially noisy controversy so close to a vote. In this context, the Government withdrew the two controversial clauses on marriage restriction and sterilization. The legislation passed but the subsequent 1928 election resulted in the surprise defeat of the Coates Government, the United Party winning government, with the support of the Labour Party. Despite ongoing campaigning for sterilization legislation throughout the 1930s, sterilization never made it onto the legislative agenda thereafter.<sup>20</sup>

Sterilization had its fierce proponents in Australia and New Zealand, mainly among the Protestant professional classes, particularly those interested in social reform. In two instances, Western Australia and New Zealand, the proponents came very close to success. A critical question with important historiographical implications is whether the failure of sterilization in the Antipodes owed as much to chance and serendipity as it did to the strength, or the imagined strength, of the opposition?

If elections in Western Australia and New Zealand had not been in the offing at the time of these debates would sterilization have become a reality? And to push the counterfactual further, would it have been possible that other Australian states might have taken the lead from Perth and Wellington and followed suit, emboldened by success elsewhere and fearful of being left behind?

While chance and circumstance, and the influence and political will of particular individuals, play a part in all this, as it does everywhere, the fact remains that in Britain and her Dominions, with the exception of two Canadian western provinces, sterilization legislation failed, in striking contrast to many other western jurisdictions in the interwar years. It was not for want of trying. Moreover, chance and circumstance must also have operated in the many countries and American states that did enact sterilization. My starting point is an argument that there were larger, structural, factors, not just happenstance, which shaped the failure of sterilization in the Antipodes. Below I try to sketch out some of these factors, highlighting critical elements of the political culture in Australia and New Zealand, some drawing on British ideas and traditions, that created a climate especially cautious about sterilization, even though at the same time eugenics was widely supported among the professional classes and segregation, at least, embraced by all governments in the Antipodes. It was sterilization that proved a bridge too far for liberalism 'Down Under'.

### WHY DID THE STERILIZATION CAMPAIGN FAIL?

If it wasn't just missed political opportunities due to bad timing and the unfortunate conjunction of tabling proposed sterilization legislation when elections loomed, then what were some of the wider contextual factors that constrained sterilization reform in Australia and New Zealand? There is some oblique reflection on this issue in the existing historiography, but in the Antipodes, this question of the failure of sterilization has received remarkably little sustained attention. Ross Jones expressed surprise at the lack of opposition to eugenics in Victoria from traditional quarters such as the Catholic Church and the labour movement.<sup>21</sup> Moira Fitzpatrick has highlighted the muted criticism of sterilization in Western Australia from these same two groups. Labour opposition was divided on the controversial 1929 Mental Defectives Bill, one of the reasons it made it so far in the legislative process.<sup>22</sup>

The focus of Jones and Fitzpatrick on labour and the Catholic Church arises from the fact that historians, overseas and in Australia, have traditionally pointed to religious objections and labour's concern for the working class as two major forces opposing the on-rush of enthusiasm for eugenics. These factors were important in Australia. The Eugenics Society of Victoria saw the Catholic Church and the labour movement as key forces in the opposition to eugenic legislation.<sup>23</sup> But there was more than this.

Nations and states with sizeable Roman Catholic populations and strong Catholic Church institutions are notable absences in the list of states passing sterilization legislation. In the interwar years, the Vatican frequently expressed its opposition to sterilization (although the Papal encyclical of Pius XI against sterilization was not issued until 1930).<sup>24</sup> Protestant states and nations, in contrast, generally embraced sterilization. The complex theology behind all this would require detailed explanation and argument but in summary Protestant doctrines of predestination, grace, piety, election and the like tended to diminish the standing of those deemed incapable of achieving these states of being. Protestantism had also closely aligned itself to science over the centuries. Catholicism, by contrast, was strongly opposed to any interference in reproduction and its focus on saving souls also gave it a zeal for the redemption of all 'God's children'. These are crude distinctions but the evidence shows that the Catholic Church was prominent in the opposition movements to sterilization, even in predominantly Protestant nations and states, such as Britain, Australia, New Zealand, those Canadian provinces with a sizeable French/Quebecois population and the North East and New England states of the USA. The fact of a substantial Irish population in Britain, Australia, New England, New York, but less so in New Zealand, gives sociological depth to the theological opposition.

Similarly, opposition from the labour movement, particularly key trade unions, is commonly cited as crucial in stiffening opposition inside parliaments to sterilization. This was commonplace in the United Kingdom. In 1934, for example, the Mental Hospital Workers Union passed a motion through the British Trade Union Congress protesting any measure supporting sterilization legislation.<sup>25</sup> In Australia the significant presence of Irish Catholics in the labour movement meant traditional labour concerns about potential wrongful incarceration of working-class youths was bolstered by theological ambivalence about interference in reproduction. More importantly labour seemed more concerned to keep

cheap labour from overseas from undermining wages in Australia than threats from mental defectives.<sup>26</sup> Catholicism and labour were undoubtedly factors underpinning opposition to sterilization. Nonetheless, we need to look further for explanations in the context of Britain and her Dominions, especially Australia and New Zealand.

The first is the emerging late nineteenth- and early twentieth-century Australian belief that the major threats to the nation were external rather than internal. Alison Bashford has done much to highlight the critical importance of the idea of the *cordon sanitaire* in Australia. Australian quarantine legislation was some of the strictest in the world, keeping threats at bay by ensuring foreign pests and diseases did not enter the country. This quarantine ethos was integral to the emerging national culture. Some of the important colonial legislation of the late nineteenth century restricted immigration of the sick and insane and in the early twentieth century the new Commonwealth Parliament and bureaucracy took control of many aspects of immigration, quarantine and other forms of health legislation to safeguard the population.<sup>27</sup> The founding legislation of the new nation was the white Australia policy. Some saw the external threat as economic, keeping Australian wages high to protect the workingman's paradise, but for others there were alternative factors and anxieties at play—protecting the race from contamination and holding back the potential hordes of Asia. Part of this involved expelling those, such as the Kanakas, who had already breached the borders. But a strong theme in Australian political culture in the early twentieth century was maintaining racial purity and in the hands of boosters like E.J. Brady this meant populating the centre of Australia to prevent Asian hordes from streaming into our unoccupied territories.<sup>28</sup> Pro-natalism was a particularly strong strand in the Australian population debate; where quantity of births trumped the quality of those births. Thus, eugenics was only one part of a broader spectrum of racial and population ideas enlivening and jostling for pre-eminence in Australian political culture.<sup>29</sup>

A related factor shaping the Australian response to eugenics was the nature of Indigenous populations in Australia. The demographic decline of Aboriginal and Torres Strait Islander peoples in the first century after European colonization has been well documented. By the late nineteenth century the idea of the 'doomed race' had taken hold. This meant that Australians perceived few internal racial threats to the homogeneity of the Australian population. All the major threats were seen to be external. In the early twentieth century rising Aboriginal

and Torres Strait Islander birth rates, and the emergence of noticeable *metis* populations necessitated a significant revision of policies towards Indigenous Australians. This underpinned what has become known as the 'stolen generations' policies of Australian states; the establishment of reserves and restricted areas for Indigenous populations to isolate them from other Australians and the removal of mixed descent Aboriginal and Torres Strait Islander children from their mothers and their confinement in juvenile homes and reformatories where they received rudimentary education and training in manual and domestic labour. These were extreme policies of racial policing, but as Warwick Anderson and Russel McGregor have argued, the demographic intent was not eugenic in inspiration. On the contrary, well into the 1940s scientists, politicians and administrators believed that mixed descent Aboriginal and Torres Strait Islander peoples could, over time, merge into the general population on the lower rungs of the social ladder. Far from being a permanent eugenic stain these theories of absorption and part-whiteness, where colour was bred out, meant that assimilation rather than eugenics dominated race theory and policy in relation to Indigenous Australians.<sup>30</sup>

Racial theory in New Zealand similarly did not see the Māori as an inferior race that had to be eradicated. On the contrary, the Māori in New Zealand were seen theoretically and scientifically in relatively favourable terms. Edward Tregear's influential text, *The Aryan Māori* (1885), argued on the basis of detailed linguistic and anthropological evidence that the Māori were in fact Aryan, related to European races.<sup>31</sup> Thus New Zealanders, like Australians, did not see a racial threat posed by indigenous populations. Rather, the key concerns were external and the focus more on exclusion of undesirables.

A third factor was the tendency of Australian doctors and eugenicists to adopt an eclectic and pragmatic approach to problems of race pollution. While there were some hard-line eugenicists in Australia, the mainstream of the movement, particularly among medical practitioners, was characterized by a belief that both hereditary and environmental factors played a role in the production and effective management of problem populations, such as delinquents, the insane, criminals, sexual deviants and the like. Some saw a hereditary and eugenic dynamic at the heart of these social problems. Permanent segregation, and for some, sterilization was an answer. But others also saw gradations of 'stain' or in some contexts forms of criminality, insanity, delinquency and psychopathology that had no eugenic basis and could be addressed through environmental

interventions—probation, parole, education, psychotherapy, healthy outdoor activities, sunshine, rural labour, better nutrition and so on. Prominent psychiatrists such as Ralph Noble, John Bostock and Henry Maudsley saw that both physical and psychological factors worked in different ways on each patient and that heredity was at the extreme end of the spectrum affecting only a minority of patients. As Noble argued ‘both physical and psychological causes interact’.<sup>32</sup> If this was the case then the eugenic obsession with heredity missed much in understanding psychological, mental and intellectual disorders. Indeed, it was part of the Australian national consciousness that the outdoor culture of Australia made Australians intrinsically healthier than those from the slums of Britain. Many saw environmentalism as more germane to the colonial environment than eugenics.<sup>33</sup>

Others, like prominent Melbourne doctor and social reformer J.W. Springthorpe, felt that reformers could have more impact focusing on the environmental factors, because hereditary conditions were so hard to change. Reform movements, such as mental hygiene, carried great favour in Australian medical and reform circles, complicating single-minded adherence to eugenics. Australian Ralph Noble became a major figure in the US mental hygiene organization. Moreover, there was considerable confusion and debate about the dividing line between heredity and environment. The trope of curable and incurable conditions was integral to Australian medicine and social reform. Importantly many of Australia’s most prominent eugenicists were at the same time supporters of environmentalist solutions for curable populations. Eugenics and environmentalism were not polar opposites but points on a continuum of interest in problem populations.<sup>34</sup>

This ambiguity about hereditary and environmental factors, and the debates among experts about the dividing line between them, provided the basis for a fourth factor, which weakened extreme eugenics in Australia. For politicians and legislators scientific debate was an anathema. What they required was certainty. If they were to go out on a legislative limb, then a scientific consensus was preferable. But this was not forthcoming. In Britain and America there were influential critics of eugenics, notably G.K. Chesterton and Franz Boas. In Australia, similarly, prominent doctors questioned the utility and pertinence of eugenic approaches. In 1938, when the Eugenics Society of Victoria invited J.K. Adey, Superintendent of Royal Park Mental Hospital, to give a lecture to the Society on hereditary factors in insanity he responded declaring ‘it

would be like asking a communist to lecture before a Fascist society: I do not think hereditary factors have a great influence.'<sup>35</sup> More importantly the Victorian Branch of the British Medical Society also expressed concern about sterilization, fearing that the scientific evidence supporting it was contested and that this might bring medical practitioners into disrepute.<sup>36</sup> In the mid-1930s authorities, such as W.S. Dawson, Professor of Psychiatry at the University of Sydney, were still arguing that 'as regards sterilization, I agree we are still ignorant as to the precise qualities which we propose to study in heredity'.<sup>37</sup> Similar concerns underpinned British debates about sterilization. The 1934 Report of the Research Committee into Mental Disorders, for example, stressed that the scientific basis for sterilization, and more importantly the psychological effects on the individual of such a procedure, were still a matter of experiment and debate. The Report urged further research rather than precipitate action.<sup>38</sup> In the absence of scientific consensus legislators were reluctant to enact controversial legislation that potentially infringed the rights of individuals and might be subject to contest in the courts.

The caution of politicians was reinforced by advice from public servants. In 1929, for example, the NSW Crown Solicitor wrote to the Inspector-General of Mental Hospitals advising that sterilizations could only be performed on the inmates of the State's mental institutions if the procedure was for the 'benefit' of the patient.<sup>39</sup> This echoed similar advice from British civil servants during the interwar years. In essence the advice being offered to politicians behind the scenes was suitably cautious and conservative but also grounded in critical legal principles. In the UK and Australia, the advice was essentially that a legislative basis for sterilization could not rely solely on the principle that it would benefit future generations (by eradicating the reproductive potential of those with a flawed genetic makeup). The grounds for compulsory medical intervention could only be based on benefits for the individual undergoing the operation. In the absence of scientific consensus on the benefits of sterilization, a narrow legal focus on the protection of individuals from unnecessary intervention except where it benefitted the patient directly undermined eugenic arguments about the future of the race.

The liberal principles invoked in such contexts were the cautious protective ones embodied in Berlin's notion of 'negative liberty'—freedom from interference—not the positive affirming ones of self-realization more common in our contemporary debates on disability.<sup>40</sup> In the early to mid-twentieth century, a cohort of influential bureaucrats and

politicians in Britain and the Dominions, often trained in the humanities and law, sustained a focus on the civic and constitutional importance of checks and balances against equally influential voices proclaiming the need for social engineering and intervention for the national good. The former, however, were often in the interstices of governments, advising ministers and governments, counselling political caution where there was doubt and the importance of protecting individuals from unnecessary interference by the state. Within these cautious legal, bureaucratic and political frameworks, the state should act only in the interests of the individual unless there was compelling evidence that the state was threatened. For these bureaucrats and politicians that lack of scientific consensus on eugenics undermined the argument for excessive intervention, except when actual crimes had been committed (hence the ease with which habitual criminal legislation was passed in many jurisdictions). These ideas and dispositions provided an important discursive and legal bulwark against illiberal discourses. Far from illiberalism sweeping aside liberalism in the West, in jurisdictions with robust democratic and liberal political institutions—elected governments, independent judiciary, strong civil and public service institutions—there were powerful counter-vailing forces inhibiting eugenics.

One response to these protections was to push for voluntary sterilization legislation. This was the recommendation of the 1934 UK Brock Report, a departmental inquiry closely followed by the NSW Premier, who asked the government's Agent General in London to keep him informed of developments in this committee and any legislative provisions it might propose.<sup>41</sup> But as critics of sterilization, including key ministers in UK Governments, pointed out, there was a clear contradiction in the idea of voluntary sterilization. Consent had to be based on mental capacity and yet the grounds for seeking sterilization in the first place was mental incapacity.<sup>42</sup>

In this climate of debate, several Australian and New Zealand doctors who looked to Britain for precedent on policy, were reluctant to risk the controversy of pushing too hard for sterilization. Some believed that it would open doctors up to legal contest if patients changed their minds and sued doctors for a wrongful procedure. Reports in the British press of families of patients sterilized suing doctors and hospitals for 'alleged trespass of the person, negligence and breach of contract' heightened concerns of the potential legal pitfalls of operations when there were doubts raised about the 'consent' that had been obtained.<sup>43</sup>

Psychiatrists in particular were anxious about their professional status within the medical profession and wanted to avoid issues that might expose them to criticism and controversy. Prominent doctor and mental hygiene expert, Harvey Sutton, argued that until the legal situation became clear ‘no hospital would permit doubtful operations’.<sup>44</sup>

A final factor is that some astute doctors felt legislation was unnecessary. In recent decades, reports for the Human Rights and Equal Opportunity Commission have indicated that the practice of sterilizing young women in institutions deemed defective had a long history in Australia and continued down into the 1990s.<sup>45</sup> Although not formally legal, sterilizations did take place in Australia. Patients in mental hospitals, reformatories and other institutions were subjected to sterilization operations. Similarly, it seems highly likely that some private patients were also sterilized. What was required was the consent of parents or guardians. In some instances, doctors could obtain consent and proceed on this basis. Governments and courts turned a blind eye to medical procedures obtained on the basis of consent. So, for some, the eugenic campaign to extend the capacity to undertake sterilization was unnecessary and threatened to compromise the doctor/patient/parent/guardian relationship and their current freedom to act in the best interests of their patient.

## CONCLUSION

What does a focus on the absences or failures in eugenics tell us more generally? First, it suggests that while eugenics was a transnational movement, where eugenicists around the world collaborated, swapped ideas, participated in international congresses and monitored international developments, its success and impact in specific national and state contexts was shaped by local factors of class, race, religion, social structure and political and judicial institutions. Second, it points to the fact that British institutional frameworks, in Britain and its Dominions—parliamentary democracy, independent judiciary, rule of law, respect for individual rights safeguarded in the courts and a disinterested public or civil service safeguarding traditions regardless of who was in government—were an additional bulwark against social engineering and illiberalism. Finally, the sense that the Antipodes were less prone to the hereditary taints of a decaying, urbanized West, where a healthy, vigorous outdoor people thrived, and hence where most of the threats

were external—immigrants and Asian hordes—fostered a much stronger sense that environmentalism was more important for social progress. Heredity explained much but studies commissioned by governments or the medical profession consistently found that the threat seemed far less than many a eugenic jeremiad suggested. Far from sources of contamination, as long as the borders were well policed, Australian and New Zealand citizens felt they were relatively immune to hereditarian taints and eugenic legislation was less urgent.

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2. Rob Watts (1994) ‘Beyond Nature and Nurture: Eugenics in Twentieth Century Australian history’, *Australian Journal of Politics and History*, 40, 3, 319. Wanhalla ‘To Better the Breed of Men’, 163–182 and see also some of the chapters in this book.
3. Garton ‘Eugenics in Australia and New Zealand’, p. 244. As I argue later in this chapter, and as is evident in other chapters in this book, notably those by Diane Paul and Hamish Spencer, many of those influenced by eugenics, such as Harvey Sutton, Truby King and Theodore Grey, also adopted progressive environmentalist stances as well. In this context, I am using the concept of ‘progressivism’ developed in Michael Roe (1984) *Nine Australian Progressives: Vitalism in Bourgeois Social Thought, 1890–1960* (St Lucia: University of Queensland Press).
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2018, XVII, 320 p. 4 illus., 2 illus. in color., Hardcover

ISBN: 978-3-319-64685-5