



*Halakhah in Mourning: A
Rabbinic Responsum on
Jewish Doctors'
Compliance with Nazi
Germany's Compulsory
Sterilization and
Eugenics Program*

Torah in Motion
Tisha B'Av 5786

with Rabbi Benjamin J. Samuels, PhD

**A Model of
Spiritual Resistance
and Moral Triumph?**

Law for the Prevention of Genetically Diseased Offspring *Gesetz zur Verhütung erbkranken Nachwuchses*

July 14, 1933

The basic provisions of the 1933 law stated that:

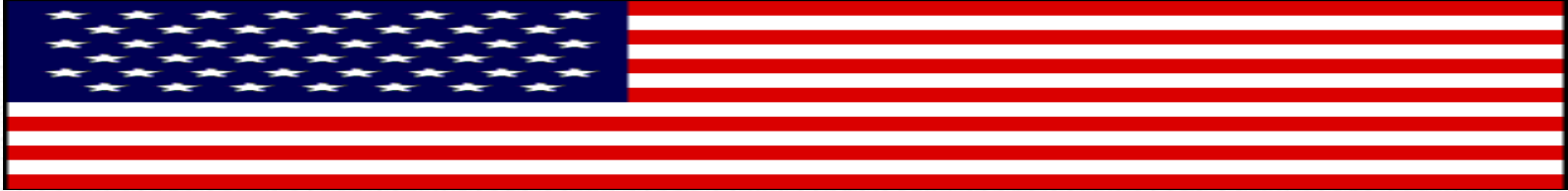
- (1) *Any person suffering from a hereditary disease may be rendered incapable of procreation by means of a surgical operation (sterilization), if the experience of medical science shows that it is highly probable that his descendants would suffer from some serious physical or mental hereditary defect.*
 - (2) *For the purposes of this law, any person will be considered as hereditarily diseased who is suffering from any one of the following diseases:*
 - Congenital Mental Deficiency (2) Schizophrenia (3) Manic-Depressive Insanity (4) Hereditary Epilepsy (5) Hereditary Chorea (Huntington's)
 - (6) Hereditary Blindness (7) Hereditary Deafness (8) Any severe hereditary deformity
 - (3) Any person suffering from severe alcoholism may be also rendered incapable of procreation.
-



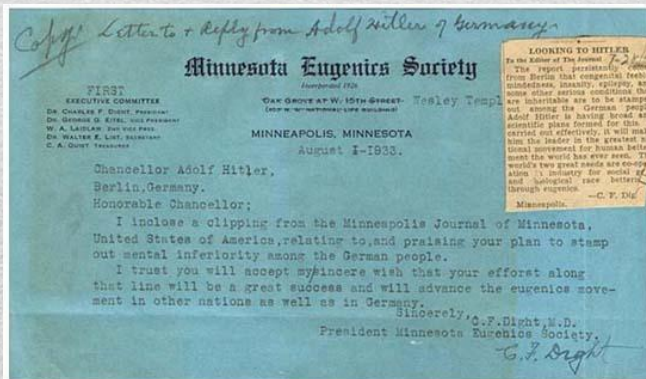
- By the end of the Nazi regime, over 200 Hereditary Health Courts were established and over 400,000 individuals were forcibly sterilized.
- “We have courts. It is done very legally, rest assured. We have law and order.” An SS Officer to Dr. Gregor Ziemer (*Education for Death*. Oxford UP: 1941)

Hereditary Health Courts

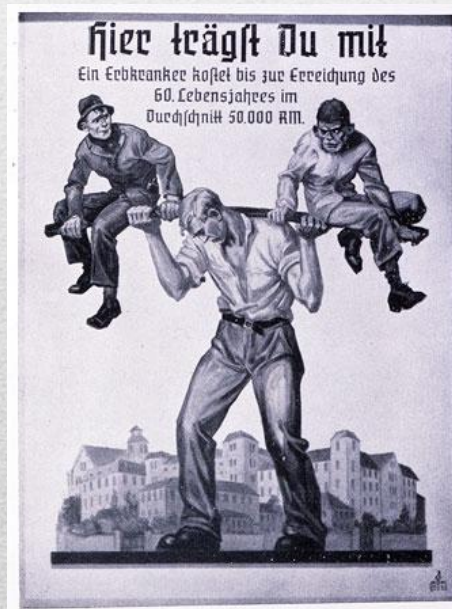
Erbgesundheitsgerichte



- Harry Laughlin of the American Eugenics Record Office: “Doubtless the legislative and court history of the experimental sterilization laws in the 27 states of the American union provided the experience which Germany used in writing her new sterilization statute. To one versed in the history of eugenical sterilization in America, the text of the German statute reads almost like the ‘American model sterilization law.’”



Propaganda for Nazi Germany's T-4 Euthanasia Program: "This person suffering from hereditary defects costs the community 60,000 Reichsmark during his lifetime. Fellow German, that is your money, too." from the Office of Racial Policy's Neues Volk.



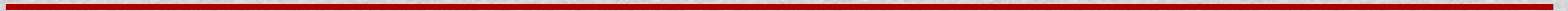


Responsa Bigdei Sheish by Rabbi Shalom Shaul HaKohen Munk (b. Lemberg,1899 - d. Tel Aviv, 1978)
January 19, 1935 -- *Leil Tu Bishvat*, 5695

Questions pertaining to that which is prohibited and permitted emerging from the laws toward the prevention of inherited illnesses by children, from July 14,1933, and the law against habitual dangerous criminals etc. from November 24,1933

I. The new state laws raise new questions in Jewish law. Even though we are certainly obligated to serve the laws of the state, we have to find the range of permissible options within the state law and it is upon us to test them by way of Jewish law in order to know which actions are permitted by state law and by Jewish law. As an introduction to the forthcoming explanations written below in Hebrew we will first preface these with a short explication of the two state laws mentioned above.

The first law is a direct consequence of the reigning racial theory. The state is obligated to insist upon healthy children from the perspective of heredity. It is incumbent on the state to worry that there should only exist amidst the nation people who are whole in their person, both body and spirit. Therefore it must also prevent people such as these from giving birth which according to the state of science appears to them as a close possibility of defective children either in their spirit or there by. Therefore the state has accepted upon herself the obligation to prevent the birth in situations such as these by way of an action against their body. the legislators have enumerated a number of different types of lists or bodily defects that should be seen as hereditary diseases. Those people who suffer from these diseases or who have suffered from these diseases should be sterilized according to the reasoning of the state. As an aside, people who have been healed from these illnesses are not excluded from the parameters of the law. On the contrary according to the view of the official interpreter these people are more endangered to racial health since they appear as healthy and therefore they have a greater chance of bearing children for whom the characteristics of the disease will pass from them to their offspring.

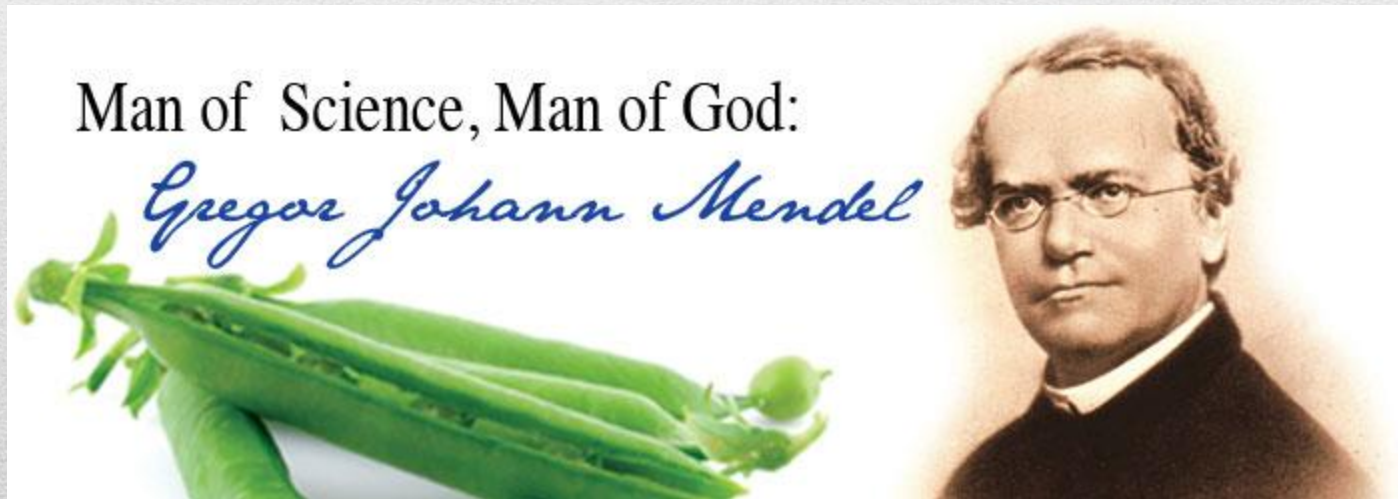


Those individuals who should be sterilized by this law are able to present themselves in an appellate request to the governmental position however even the official governmental physician is obligated to present the request for sterilization the moment that he learns that people have such hereditary diseases. And not only that, but a physician is obligated to make known to the official governmental physician every incident of hereditary disease which is known to have. The decision for her sterilization is in the hands of the court for racial health which has three members two of whom which are physicians. One can lodge a complaint in the Supreme Court for racial health and its decision is final.

The action is implemented even against the will of the person to be sterilized except in a case where the person who has a hereditary disease himself presents his appeal and the official governmental physician does not agree (something which is not happening) - through excision or severance of the vas deferens of a man or through excision or severance of the fallopian tubes and ovaries of women. This action does not hurt the dispensing of the necessary fluids parentheses hormones) into the circulation of blood nor does it impact upon sexual desire or performance, it only prevents reproduction.

The second law mentioned above is directed toward criminals who are repeat offenders of crimes, especially sexual crimes. For them enacted by the rule of the judicial Court is actual castration (the removal of the testicles) and through this both desire and sexual performance are nullified.

It is also necessary to mention in this introduction the scientific basis for the first law -- that is the general principles of inheritance expounded by Mendel, a monk whose name was Mendel, found through experimentation with vegetation that's the percentage likelihood to inherit a hereditary disease is 50%. That is, on average half of one's children will either be ill or display the characteristics of the disease...The legislator therefore sees as fitting to prevent the possibility of reproduction from these people, because a 50% chance of illness has been considered sufficient grounds to enact a law in this way for the sake of racial survival.



Just as an aside we will mention briefly the opinion of the Torah of Israel toward the problem of hereditary illness. It is not built upon racial theory. However even in the time we find that one should consider the likelihood of having diseased offspring at the time of marriage. So it is written in the Babylonian Talmud, Yevamot 64b: “A man should not marry a woman neither from a family of those disabled nor from family of those stricken with leprosy,” and so it is ruled in the Code of Jewish Law, Even HaEzer, section 2 subsection 7. We also find in the Mishnah Ketubot Chapter 7 Mishnah 10 that in a case of communicable disease (however their intention is prevent the infection of the spouse) one can enact a divorce even against one’s spouse’ will and so the halachah has ruled. However, in all cases there is no fundamental prohibition in the law. In the first case, it is the sharing of wise counsel to the person who desires to marry a woman. In the second case, the rabbinical courts will force a divorce in accordance with the wishes of one of the spouses, but only if requested, not imposed by their own will. If so, the prevention of passing on hereditary disease is to the benefit of individual, but this is not a question for legislation or for the public. Accordingly it would appear that the Torah of Israel is individualistic on this point. In my opinion, one must understand the matter from a worldview that considers these problems not only from a scientific perspective, but also from ethics. One must also mention faith in God also in this area, such that a person have faith in God to draw the white balls, using the example above. The Talmud advances this rationale, for example Yevamot 42a: “if according to the one who holds that Divine compassion will come from the heavens, then Divine compassion will come from the heavens (re: intercourse with a pregnant woman) ; Yevamot 12a; 110a; Ketubot 39a: the Sages say whether one might this or like that should have normal relations; “God protects the simple”. The Talmud brings in its account that because we lack the knowledge (i.e. we are simple) or because of our faith in God (may God from Heaven have compassion) people should do these actions even if they do not have any better chances than from the vantage point of science. This force of considering the providence of God against human calculations is the major principle of the worldview of the Jew and therefore one should not do in accordance with the order as it appears necessary from a scientific perspective.

After the German Introduction, Rabbi Munk proceeds with a halakhic analysis of the prohibition of the act of sterilization, of the status of the person who has been sterilized, whether one should expend significant financial resources to avoid sterilization and whether spouses can live together after sterilization.

What emerges in conclusion is that a Jewish doctor is forbidden to sterilize a Jewish or non-Jewish man. He may sterilize a non-Jewish and Jewish woman. A Jewish man must do his utmost to avoid sterilization, though it is unclear how much money he must expend. A Jewish woman may submit. A sterilized man must be divorced from his wife, but a sterilized woman may remain with her husband.

Signed on the Date: The night of Tu Bishvat, 1935

