

Eugenics as wrongful

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In a landmark legal case in 1996, eugenics survivor Leilani Muir successfully sued the province of Alberta for wrongful confinement and sterilization. The legal finding implied that Ms. Muir should never have been institutionalized at the Provincial Training School of Alberta as a “moron” and sterilized under the Sexual Sterilization Act of Alberta. The trial itself revealed many unsettling features of the province’s practice of eugenics, raising questions about how a seemingly large number of people, like Ms. Muir, who were not mentally defective, could have been wrongfully confined at an institution for the feeble-minded, and subsequently sterilized on eugenic grounds. Employing a three-agent model of wrongful accusation and conceiving of eugenics as wrongful more generally may help in understanding the operation of eugenic practices, such as institutionalization and sterilization, both in Western Canada and elsewhere. Eugenic practice involves a form of wrongful accusation that marks a significant departure from eugenic ideology.

Wrongfulness

The concept of wrongfulness is drawn from legal contexts and applies in the first instance to criminal convictions. A wrongful conviction in a legal criminal case occurs when the decision to convict someone is mistaken. Initial accusations may be false, police investigative work may be misleading, defense counseling may fail to satisfy minimal

standards, or there may be communal pressure to convict the person. The presumption is that the legal system is designed to ensure a fair process in a criminal trial, and that people are assumed innocent until proven guilty. Thus, to move from innocence to a verdict of guilty without the person having committed the crime in question, there must be at least one process leading to the conviction that “goes wrong” in some way.

The failures implied by a wrongful conviction are both procedural and systematic. Since the legal system has procedures aimed at preserving the presumption of innocence, in cases of wrongful conviction we say that the legal system failed to deliver justice. Likewise, to attribute wrongfulness to a particular eugenic practice, such as the decision to admit and retain someone in an institution for feeble-minded persons, points to procedural and systematic failures in a larger set of eugenic practices.

Wrongful Accusation

A passing comment by sterilization survivor Ken Nelson in the film *The Sterilization of Leilani Muir* suggests that the wrongfulness of eugenic practices extends beyond endpoint decisions, such as that to confine or to sterilize someone. Talking of his general experiences in the Provincial Training School in Red Deer, Alberta, Mr. Nelson says that “it was almost as if you had committed a crime”. That feeling of having been accused of a crime that one did not commit, of having been falsely accused, provides another way to think of the wrongfulness of eugenics: as laying in part in procedural and systematic failures to prevent or halt the effects of the equivalent of false accusations of mental defectiveness.

Although accusations of criminality are not usually thought to be wrongful in the same sense as are convictions, the concept of wrongful accusation parallels that of wrongful conviction. The very procedural

and systematic failures that result in a mistaken outcome or decision can also operate so as to allow a false accusation to be made, to be heard, and to initiate legal proceedings.

Ritual Sexual Abuse and Wrongful Accusation

The accusations at the heart of the satanic or ritual sexual abuse cases prevalent in North America during the 1980s and 1990s provide a paradigm of wrongful accusation. Beginning with the McMartin preschool case in California in 1983, over the next 15 years more than 100 similar cases involving allegations of ritual sexual child abuse, often involving “satanic” elements, developed in the United States and Canada. These cases included extensive charges of multi-child sexual abuse involving many daycare workers (as in the McMartin case) or groups of largely working class parents (as in the Bakersfield case). Many of the cases involved truly bizarre allegations, such as that the accused flew around in the air unaided, and that putative victims had been pierced with sharp objects although they bore no visible signs of such piercing.

Rather than such accusations being dismissed in virtue of their bizarre nature, the lack of credibility of witnesses, the absence of physical evidence, and the large-scale inconsistencies in the charges, ritual sexual abuse cases often involved a multiplication of charges and extensive legal proceedings. For example, in Wenatchee, Washington, ultimately over 30 000 charges were laid against more than 40 people in legal proceedings that endured more than three years. No ritual sexual abuse took place there.

Eugenics and Wrongful Accusation

Striking about such wrongful accusation is that despite there being legal and social systems to detect false accusations and prevent them from cascading through to wrongful convictions, those systems themselves fostered that cascade. Here the parallel to eugenic practices

is perhaps most suggestive. For cases such as that of Leilani Muir, as well as many of the more than 700 related cases that were settled by the government of Alberta in its wake, precisely the same is true. What should have been detected as false diagnoses of mental deficiency, or as mistaken admissions to training schools for the feeble-minded, cascaded through instead to long-term confinement and eugenic sterilization. Moreover, this happened not only despite, but in virtue of the very system of protections and checks put in place to prevent misapplication of eugenic ideology. This conceptualization of eugenics as involving wrongful accusation thus invites new ways of thinking about the mechanics of eugenics.

Appeals to the notions of “moral panic” or “group think” are common in explaining both ritual abuse cases and that of eugenics. Potentially more insightful, however, is a dynamic model focused on interactions between three kinds of agents—victims, perpetrators, and bystanders.

A Three-Agent Model of Eugenics as Wrongful

In standard cases of sexual abuse, the perpetrator is an adult (often a male), the victim is a child, and bystanders include other adults, some of whom occupy special positions of authority in virtue of their familial or social position. Familiar from classic feminist work on sexual abuse, bystanders have been viewed as playing, and indeed have been called on to play, an active witnessing role in intervening to end such abuse (e.g., Herman 1997).

This interventionist role, however, had devastating consequences in ritual sexual abuse cases, with zealous actions of would-be bystanders, such as social workers, police officers, parents, and other concerned citizens, in effect creating new victims—innocent adults who had committed no relevant crime at all. One way to think of this is in terms of there having been a shift in the occupants of the three roles in standard cases of child sexual abuse. In ritual sexual abuse cases,

adults in special positions of authority—would-be bystanders in standard cases—become perpetrators; falsely accused, innocent adults become victims (along with children who tragically come to falsely believe that they have been subject to ritual sexual abuse); and other adults and children become bystanders called in to “witness” crimes that in fact did not occur.

Likewise, in the case of eugenics we can distinguish two cases, the standard or idealized case—that comporting with eugenics ideology—from eugenic practice. In eugenic ideology, the feeble-minded and others of inferior stock are perpetrators, the innocent public and future generations are victims, and those in positions of social authority—politicians, scientists, social advocates, community leaders—are bystanders. In eugenic practice, however, enthusiastic intervention by such authorities, in effect, shifts the occupants of these three roles. In eugenics as practiced, those wrongfully accused of mental deficiency and as being of inferior stock become victims; those in positions of social authority become perpetrators; and the innocent public become bystanders called on to “witness” and intervene in a putative intergenerational process—degeneracy, race suicide—that in fact does not exist.

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