

Report of the MacEachran Subcommittee, Department of Philosophy April 1998

[This report was subsequently adopted as policy by the Department of Philosophy, the Department of Psychology, and the Faculty of Education: all have ceased to grant awards in MacEachran's name]

Professor John M. MacEachran was the founder of the Department of Philosophy and Psychology at the University of Alberta, and served as its first Head. He also served as the University of Alberta's first Provost. He retired from the University in 1945, and died in 1971 at the age of 94.

MacEachran's memory is honored by a number of medals endowed in 1958 and scholarships endowed by his estate in 1972. The Faculty of Education awards two \$1000 MacEachran Scholarships of each year, and the Departments of Philosophy and of Psychology each award two \$750 MacEachran Scholarships and a MacEachran Medal every year. These awards are paid for out of trusts administered by the MacEachran estate; Departments nominate recipients, and the prizes are to be awarded in MacEachran's name.

In recent months, questions have arisen about the appropriateness of bestowing academic honors in MacEachran's name, given his role as Chairman of the Alberta Eugenics Board from 1929 to 1965. The issue here is not simply MacEachran's active involvement in approving eugenic sterilizations under provincial statute. Since Leilani Muir's successful civil suit against the provincial government for wrongful sterilization in 1996, it has become clear that the Alberta Eugenics Board, under MacEachran's chairmanship, operated irresponsibly and often in flagrant disregard for its statutory authority.

In 1998, the Department of Philosophy's Staff Council struck a Subcommittee to examine the issues, and to make a recommendation on the future of the MacEachran Scholarships and Medals. The Committee faced the task of sorting out complex historical events, influences, and standards; it also came up against difficult issues of our ability to judge figures of the past by standards of the present. Upon consideration of the facts, however, the Subcommittee saw clear evidence that the Eugenics Board, headed by MacEachran, acted unethically and unprofessionally not only by the standards of the present but by the standards of its own time.

The activities of the Eugenics Board were conducted in camera, and have only been subjected to scrutiny in recent years; these activities stand up poorly to scrutiny. While the Eugenics Board was charged with ensuring that sterilizations in Alberta were carried out in conformity with statute, we find that it approved sterilization with scant concern for the facts of individual cases, and often for reasons not specified by statute — illegal reasons such as the control of sexual behavior, the procurement of tissue for medical research, the prevention of menstruation in institutionalized women, and the punishment of perceived sexual deviancy.

It is on these grounds that the Subcommittee recommends that the Department of Philosophy cease awarding honors in MacEachran's name. As we discuss below, we see strong arguments for keeping alive the memory of MacEachran's actions, and of the dissonance between his seriousness as an academic and his irresponsibility as the Chair of the Eugenics Board. There are important lessons here about the social responsibilities of philosophers, the dangers of social engineering, and so forth. While the Department should remember MacEachran, however, it should not honor him, nor can it afford to be seen as minimizing or condoning his actions as head of the provincial Eugenics Board.

The discussion that follows is divided into two parts. We first lay out ways in which the practices of the Eugenics Board violated laws of the Province of Alberta, and reflected an unethical disdain

for the rights of individuals whose fates were entrusted to the Board. These are the grounds on which we recommend that the Department dissociate itself from the MacEachran Scholarships and Medals.

The second part of this report broadens the discussion. The Subcommittee wishes to note that while the Department has a responsibility to respond specifically to MacEachran's actions, a much broader set of issues and responsibilities is raised by the actions of the Eugenics Board. Part Two of this report therefore sketches a broader set of issues that face the University Community as a whole.

Part One: Reasons for ceasing to award honors in MacEachran's name

The Eugenic Board's violations of statute

The Sexual Sterilization Act was passed by the Legislature of the Province of Alberta in 1928. While there was controversy at the time over the scientific and ethical merits of eugenics, it seems fair to say that the Act, drafted to prevent the procreation of those with mental disabilities, was in keeping with ideologies current at the time.

Section 4(1) of the *Sexual Sterilization Act* empowered the medical superintendent of a mental hospital to cause a patient of the mental hospital whom it proposed to discharge to be examined by or in the presence of the eugenics board, with a view to sterilization. Section 6 of the Act established two grounds for sterilization: that procreation by the person under consideration would result in the transmission of any mental disability or deficiency to his or her progeny or involved the risk of mental injury either to such a person or his or her progeny.¹

The original Act named the four members to the Eugenics Board, charged with approving recommendations for sterilization and ensuring that these conformed to the Act. MacEachran was named as the Board's Chairman, and was the one continuous member of the Board from 1929 to 1945.²

While the minutes of the Board are preserved, they do not record individual opinions or debate on particular cases. Decisions of the Board had to be unanimous, however, so MacEachran would have concurred with every decision. In the 44 years of its operation, 2822 sterilizations were carried out with the approval of the Board.³

There is clear evidence that in approving sterilizations, the Board frequently violated the statutory conditions of its authority.⁴ The Statute required that two standards be met before sterilizations could be performed: the sterilizations were to be performed on patients ready for discharge by institutions, and who were at risk of passing their 'defects' on to offspring.

¹ Muir v. Alberta, [1996] 4 *Western Weekly Reports*, at 179.

² On the constitution and reconstitution of this board under statute, see Muir v. Alberta, 199. Jon Faulds, Leilani Muir's lawyer, suggests that as the only continuous member of the board, MacEachran established and sustained its procedures and routines; well-established procedures were in place when new members came onto the Board. [Personal communication with David Kahane] As the Subcommittee is unaware of direct evidence for this claim, it has not figured in our recommendations.

³ Robertson in Muir v. Alberta, 232.

⁴ The most important source of evidence for our deliberations is the judgment delivered by Justice Veit in the case of Muir v. Alberta, 1996.

- In many cases, including that of Leilani Muir, the Board approved sterilizations where the discharge of the patient was not imminent.⁵
- The Board approved sterilizations without clear evidence that deficiencies would in fact be passed on to the patient's offspring.⁶
- The Board approved for sterilization patients who did not meet its own standards for mental defect.⁷
- The Board approved sterilizations in cases where patients were already known to be infertile. For example, it was well known from the 1940s onward that male 'mongols' are infertile. Yet the Board approved the castration of a number of such men in order to procure testicular tissue for scientific research.⁸
- There is considerable evidence that the Board frequently approved sterilizations in the belief that this would alter the sexual behavior of institutionalized patients.⁹

⁵ Referring to testimony at the Muir trial by M. Thompson, a former board member, Justice Veit says the evidence

establishes that the powers of the Board were used not in accordance with either scientific principles or legislative standards, but in support of social policy about who should be allowed to have children in Alberta. Her evidence also establishes that in most requests for sterilization that came before the Board, the inmate would never be discharged, or it would be a very long time in the future before any discharge were contemplated. [Muir v. Alberta, 208-209]

⁶ According to Veit, Thompson's evidence clearly shows that the Eugenics Board did not meet the standards imposed on it by the legislation. She acknowledges that the board could not...be certain that any defect of the trainee would be passed on to the trainee's offspring. Dr. Thompson testified that the Board unilaterally modified the standard passed by the Legislature of Alberta; in her opinion, the legislature had set a standard that was unreasonably tough — too high to meet. [Muir v. Alberta, 212]

⁷ As Justice Veit writes in her judgment, Despite the fact that the eugenics Board claimed to have an IQ cut-off point of 70, persons above that level were approved for sterilization; some of those persons had conditions such as spinal meningitis, hearing defects, or had been accused of criminal offenses... [Muir v. Alberta, 221]

⁸ "The Eugenics Board was directly implicated in some of le Vann's...experiments. He was working on a project entitled 'A study of Spermatogenesis in Mongols' and needed testicular tissue from trisomy-21 males. The Eugenics Board assisted le Vann by ordering testicular biopsies of at least 15 Down syndrome males, and the actual surgery sometimes entailed unilateral orchidectomy (castration), despite the widely accepted fact that these males were sterile and their Down syndrome was not hereditary." [Douglas Wahlsten, "Leilani Muir versus the Philosopher King: Eugenics on Trial in Alberta," *Genetica* (1997), 6.] See also Muir v. Alberta, 215.

⁹ Veit writes that It seems clear from [Dr. Thompson's] evidence that persons who were brought before her were unlikely to be discharged; one can only conclude, therefore, that the sterilization was done primarily to control sexual activity in the institution rather than for any of the purposes set out in the legislation. [Muir v. Alberta 214]

Professor Robertson of the Faculty of Law at the University of Alberta concurs with this judgment in his own expert testimony in Muir v. Alberta:

The Patient Chart Information...emphasizes that those who administered the Act attached considerable importance to any history of criminality, delinquency, and sexual promiscuity on the

- The board approved some sterilizations with the goal of eliminating menstruation in institutionalized women.¹⁰
- In its decisions, the Board showed a propensity to favor the sterilization of members of particular social groups.¹¹
- While the Board was expected to ensure that evidence offered for particular sterilizations met the scientific and professional standards of the time, there is strong evidence that it failed to consider available scientific evidence.¹²
- While in its early years the Board is said to have spent as much as half a day on each case,¹³ it soon came to dispatch cases at a rate that made a mockery of its oversight role. Summarizing expert testimony in the Muir trial, Justice Veit writes:

Professor Robertson's evidence establishes that, routinely from the 1930s on, the Board frequently dealt with cases at the rate of 10 minutes per case or less. The members of the Board had no information on the cases in advance of their meetings. This speed of dealing with irreversible decisions establishes that the Board could not have taken the time to examine the cases in any meaningful way; it is obvious that the Board relied almost entirely on the recommendation of the executive director of [The Provincial Training School for Mental Defectives], Dr. le Vann.¹⁴

According to Professor Robertson, the Board approved almost every case that came before it; he suggests there is "overwhelming evidence" that the Board performed no independent function, and engaged in no serious investigation of the cases before it.¹⁵

Justice Veit writes, further, that

Dr. Thompson's evidence demonstrates that the operations of the Board initiated on a purported scientific rationale, degenerated into unscientific practices. The decisions of the Board were not made according to the standards imposed on them by the legislation, but

part of a patient. It is clear that this type of behavior was viewed by the Board as highly relevant and indicative of a need for sterilization. [in *Muir v. Alberta*, 252]

¹⁰ As Justice Veit notes, "In some cases, the Board authorized the hysterectomy or oophorectomy (removal of the ovaries) in order to eliminate menstruation in females; according to the language of one typical case, the female trainees were "difficult to handle and to keep clean during menstrual periods". These operations were also ordered where female trainees masturbated or had lesbian tendencies." [*Muir v. Alberta*, 221-222]

¹¹ Justice Veit finds corroboration for Robertson's testimony that there were systemic biases in the operation of the board so that, for example, females more than males, and females from Eastern Europe and Catholics and later female natives were more likely to be sterilized. [*Muir v. Alberta*, 209]

There is evidence that MacEachran was aware of this disproportion in the treatment by the Board of different social groups: he in fact supervised a thesis by one Mary Frost on this very aspect of the Board's decisions.

¹² See *Muir v. Alberta*, 211.

¹³ Heather Pringle, "Alberta Barren," *Saturday Night* (June 1997), 35.

¹⁴ *Muir v. Alberta*, 209

¹⁵ Personal communication with David Kahane.

because the members of the Board, like Dr. Thompson, thought that it was socially appropriate to control reproduction of “these people.”

I do not accept Dr. Thompson’s evidence that care was taken by the Board in deciding the fate of each individual trainee brought before it. Irreversible decisions were obviously made on the flimsiest of evidence — without any true scientific investigation of the eugenics situation of each trainee.¹⁶

- The perfunctoriness of the Board’s deliberations may be indicated by the fact, revealed by records introduced at the Muir trial, that MacEachran often signed forms approving sterilizations before the cases had been heard.¹⁷

The Subcommittee’s Recommendations to the Department of Philosophy

The above evidence indicates that the Eugenics Board, under MacEachran’s stewardship, operated in flagrant violation of the statutes it was charged with upholding. MacEachran, as a member of the Board, acted in a manner that not only is morally reprehensible by present standards, but derelict by the standards of his time, given his responsibilities as a public servant.

In her judgment in *Muir*, Justice Veit writes that “The circumstances of Ms. Muir’s sterilization were...so high-handed and contemptuous of the statutory authority to effect sterilization and were undertaken in an atmosphere that so little respected the plaintiff’s dignity that the community’s and the court’s sense of decency was offended.”¹⁸ Based on the evidence it has gathered, the Subcommittee judges that the disregard for human dignity exhibited by MacEachran and the rest of the Board in the case of Ms. Muir was unfortunately typical of its actions.

Veit goes so far as to say that “...because the government’s own standards for sterilization were ignored in Ms. Muir’s case, the conduct of the government was more than negligent, it was intentional. The sterilization became an assault and battery....”¹⁹ The Subcommittee does not see the need to appeal to present standards of morality or propriety for a negative judgment of MacEachran’s actions as chairman of the Eugenics Board: it seems clear that even by the standards of his own time, MacEachran’s disregard for the welfare of the Board’s charges was reprehensible.

The legitimacy of decisions by governments and their agents is closely tied to the possibility of these decisions being made public.²⁰ It seems likely that the decisions of the Eugenics Board escaped condemnation in their own time only because of the secrecy of the Board’s deliberations. It is difficult to believe that the decisions of the Board would have been considered legitimate had

¹⁶ *Muir v. Alberta*, 215.

¹⁷ In her judgment in *Muir*, Veit writes that the board did not carefully examine each case that came before it. On the contrary, these critically important decisions about irreversible sterilizations including salpingectomies and castrations were, in many cases, routinely signed by the chairman, and some other members of the board, in advance of the Board’s decision.... [*Muir v. Alberta*, 221]

¹⁸ *Muir v. Alberta*, 179.

¹⁹ *Muir v. Alberta*, 221.

²⁰ This standard of publicity is famously stated by Kant in *On the Common Saying: This May Be True in Theory, But Does Not Apply in Practice*: “Whatever a people cannot impose upon itself cannot be imposed upon it by the legislator either.” For a more recent statement of the principle, see Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Harvard University Press, 1996).

the reasons for these decisions been made public. We can perhaps imagine reactions — in the 1930s, 40s, 50s, or 60s — to statements like the following: “We have approved the sterilization of patients although there is no clear evidence that their conditions are hereditary, and without clear evidence of mental defect.” “We have allowed the castration of already sterile patients so that their tissue can be used for research.” “We have allowed the removal of young women’s ovaries so that staff at the Provincial Training School will not have to cope with the mess of menstruation.” Such reasons, abhorrent in our own time, would likely have been regarded as unacceptable in MacEachran’s as well. Such reasons, furthermore, would likely would have been considered abhorrent to members of the Department of Philosophy when the MacEachran Medals were first awarded in 1959, and the MacEachran Scholarships in 1973.

The Subcommittee therefore recommends that the Department of Philosophy cease awarding Scholarships and Medals in MacEachran’s name. When the Department gives out MacEachran Scholarships or MacEachran Medals, it honors MacEachran’s memory; it attaches his name to rewards it bestows upon its best students, and so perpetuates his name with this positive association. This cheapens the awards, and implies our approval of a man whose life work, taken as a whole, can no longer be seen to deserve this.

To say that MacEachran’s name should no longer be memorialized through academic honors is **not**, however, to suggest that the Department should forget about him. The coincidence of MacEachran’s chairmanship of this Department and of the Eugenics Board is cause for ongoing reflection. It should serve to remind us of the gulf that can exist between intellectual seriousness and ethical uprightness, and more broadly of the social responsibilities of academics, especially when they are given public trust based on their scholarly credentials. There also are a number of explicitly philosophical issues raised by MacEachran’s actions — not only by his invocation of Plato in the name of mental hygiene,²¹ but across the subdisciplines of philosophy of science and social science, political philosophy, and applied ethics.

The subcommittee therefore recommends that members of the Department seek ways to keep the example of MacEachran present in our courses and scholarship (as a case in applied ethics courses, for example.) While we should not honor MacEachran, neither should we permit ourselves to forget him.

Finally, the Subcommittee urges that the Department attempt to replace the MacEachran Scholarships and Medals with other honors for undergraduate students. It should certainly be possible to replace the medals with some other form of recognition of excellence. In the longer term, we should strive to find funding for undergraduate awards of an amount equivalent to the MacEachran Scholarships. In keeping with the previous recommendation, we might consider instituting an essay prize in connection with MacEachran and the eugenics movement in Alberta (for example, on the social responsibilities of philosophers, or on the role of expert knowledge in formulating public policy.)

Part Two: The provincial eugenics program and the University of Alberta

In its deliberations on MacEachran’s own involvement with the Eugenics Board, the Subcommittee was acutely aware of the implication of a range of other individuals and institutions, at the University of Alberta and beyond, in the province’s eugenics program. Just as the Department’s dissociation from the MacEachran Scholarships and Medals does not excuse us from continued

²¹ J.M. MacEachran, “A Philosopher Looks at Mental Hygiene,” *Mental Hygiene* 16, 1932.

reflection on MacEachran's disturbing legacy, so a focus on MacEachran's culpability should not be allowed to obscure a broader set of questions facing the University of Alberta.

- The Eugenics board had four members at any given time: a chairperson, two physicians, and a fourth member. The University of Alberta Senate was responsible for appointing two of these members, and MacEachran was not the only member to come from the University community.
- The Eugenics Board approved sterilizations that in turn were carried out by physicians, who at times performed more extensive surgeries (e.g. appendectomies, castrations) than required for mere sterilization. It would be interesting to know more about the association of these physicians with the University of Alberta.
- As noted in Section One, the Eugenics Board went far beyond statute in approving sterilizations, and seemed motivated by a broader social agenda, one that had to do with maintaining the purity (variously construed) of the Albertan and Canadian populations. So we have MacEachran's statement, in a 1932 address to the United Farm Women's Association of Alberta, that

We should endeavour to get away from a very costly form of sentiment and give more attention to raising and safeguarding the purity of the race. We allow men and women of defective intelligence or of criminal tendencies to have children.... There is one remedy for such eventualities and we fortunately have begun to make use of it in Alberta — although not yet nearly extensively enough. This is the Alberta Sterilization Act. Since the state must assume most of the load of responsibility in connection with defective children, it surely is justified in adopting reasonable measures to protect itself against their multiplication.²²

We would note that such views were espoused by other members of the University of Alberta community. In 1934, for example, University of Alberta President R.C. Wallace addressed the Canadian Medical Association annual banquet in Calgary, suggesting that "Science had done very much to raise the quality of the stock in the domesticated animals which man has reared for his services; it has done virtually nothing to raise the quality of the human stock."²³

As the Department of Philosophy should reflect, in a continuing way, on the implications of MacEachran's life for our own endeavours as philosophers and academics, so there seems ample room for the university community as a whole to consider the lessons of our involvement — direct and indirect — in the province's eugenics program. This seems all the more pressing when we consider that the eugenics program continued until 1972; it seems unlikely that all of those directly involved are safely resident in the past.

It is for the university community as a whole to reflect on how it might mark and remember the involvement of individual academics and the institution as a whole in the discreditable history of eugenic sterilization in Alberta. Obvious possibilities include:

- The support of research on the University of Alberta's involvement in the eugenics program, and on lessons to be drawn from this involvement.
- An apology to those victimized by eugenic sterilizations, should research establish a significant degree of involvement of the University of Alberta and its members in the operation of the Eugenics Board.

²² R.C. Wallace, "The Quality of the Human Stock," *Canadian Medical Association Journal* 31, 427-430.

²³ *University of Alberta Folio*, September 26, 1997.

- The replacement, by the University of Alberta, of scholarship funding being set aside because of the need to dissociate the University from MacEachran's bequests.
- Provision of information on the provincial eugenics program where this would be most salutary for students.

The involvement of John M. MacEachran and others at the University of Alberta in the provincial eugenics program offers important lessons about our responsibilities as academics, scholars, and teachers. It seems profoundly important, and in keeping with the social role of the University, that we find ways to sustain an awareness of these lessons.

MacEachran Subcommittee
(Kahane, Sharp, Tweedale)