EUGENIC MARRIAGE LAWS

OF THE FORTY-EIGHT STATES

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"On the selection of marriage mates made by the rising generations depends the quality of the generation yet unborn."

C. B. Davenport

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CHAPTER I

THE EUGENICISTS' IDEAL

There are many definitions of eugenics, but let us first look at that offered by Francis Galton, the pioneer in this new scientific study, as early as 1856. His definition is "the study of all of the agencies under social control which may improve or impair the inborn qualities of future generations of man physically and mentally." Davenport some decades later added his conception of this science as "a branch of applied biology which looks toward improvement of racial qualities." Victor C. Vaughan added another, "the generation or reproduction of good and referring to the human race," while Dr. Morris Siefel offers us the briefest one, "the science of the race."

Although the definitions of the many eugenicists may differ, their goal does not, i.e. to raise the average ability of the whole population.[1] To do this, Havelock Ellis points out, we must have a two fold program whereby (1) the production of bad stocks is impeded, and (2) the production of good stocks is encouraged.[2] "The prevention of bad stocks may be put first," Ellis continues,

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1 Popenoe and Johnson, Applied Eugenics (New York, 1926), 232.

2 Ellis, Havelock, "Birth Control and Eugenics", from Four Essays (Kansas, 1915), 9.

"not only because it is the most promising line of progress, but because in itself it indirectly, and even directly, favors the development of the good stocks."[2] Ellis would agree with Popenoe that the marriage ideal is the mating of strength with strength.[3] A. P. Fairchild tells us that in order to achieve this ideal we must (1) determine what traits are really germinal or hereditary and what rules govern their transmission, (2) determine what traits are socially desirable and consistent within the society in question, and (3) devise practical procedures to bring about matings of the sort that are indicated as desirable and for preventing undesirable matings.[4]

The subject of race improvement is particularly hard to treat because of the "conspiracy of silence touching matters of sex", as ex-President Eliot of Harvard defined the situation.[5] We are franker about sex questions today, but it will be a long time before the present indiscriminate parentage will be replaced by a new mos in which it will be an offense to God and man to bring a defective into existence.[6] When Olive Shreiner, about 1875, wrote in her volume From Man to Man that defectives were necessary as objects of human sympathy in

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3 Popenoe and Johnson, Applied Eugenics (New York, 1926) 200

4 Fairchild, "A Self Controlled Population", Survey Graphic, April 1, 1931, 32.

5 Carson, William E., The Marriage Revolt (New York, 1915) 9.

6 Pearson, Karl, The Right of the Unborn Child (Great Britain, 1927), 15

order to cement human communities, and further stated that in any attempt to breed out physical defectives we would tend to cut off our source of genius, she was expressing the view of the lay person of that day. This kind of philosophy can only prove detrimental to any ideal of race improvement. We save the lives of feeble-minded and crippled babies in the name of humanity and our charities subsidize them through life, including caring, in turn, for their usually large families of congenital defectives. Because of the tax in terms of money and inefficient production the sub-normal classes put on those of average and superior ability, the children of those classes are limited, we learn from students of this problem. From the eugenic standpoint we must agree with Schiller that "However powerful...a society may be and however great its resources, it is doomed if it so organizes itself as to breed the wrong sort of men and to favour the survival of the worthless at the expense of the more valuable," no matter how beneficial it might be to the souls of those who bear the burden of their care and support. Schiller continues, "Any society which does these things is biologically a failure, a rebel against the laws of life, a foe to progress, a suicide that is contriving his own destruction; and even if its example should persuade and corrupt all other societies, it would not escape the penalty of its

proves the stronger...Differences of nurture stamp unmistakable marks on the disposition of the soldier, clergyman, or scholar, but are wholly insufficient to efface the deeper marks of individual characteristics."[11]

The eugenicists hope to secure in the population as large a proportion as possible of persons belonging to the strains whose traits are of the greatest value to our social order,[12] through a three-fold program of investigation, education and legislation. We must, through a thorough program of investigation, or research, be sure of the facts which we hope to teach and by which we hope to regenerate our seemingly decaying population. Through the medium of education, we must spread the eugenic ideal to those whose children and children's children will reap the ultimate benefits, and upon whom we must depend if a program of legislation is to have any chance of enactment for the control of the selfish and moral degenerates. As Nathan Fasten has aptly stated the matter, "The goal of the eugenicist is not to create a new race of people, but rather through educational, civic, and other means, to develop a social consciousness which will result in the humane treatment and

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11 Pearson, Karl, Some Recent Misinterpretations of the Problem of Nature and Nurture (Edinburgh, 1915), 31.

12 Davenport, Charles B., "The Eugenics Programme and Progress in its Achievement" from Twelve University Lectures (New York, 1914), 1.

misdeeds.[7] Or in the words of Russel Wallace, "Humanity ...has caused us to save the lives of the weak and suffering, of the maimed or imperfect in mind or body. This has...been antagonistic to physical and even intellectual race-improvement."[8] For "The physical and mental health and efficiency of a generation depend not alone on the conditions under which that generation develops, but also largely on what individuals of the previous generation are the parents of that generation, and how those parent-individuals have been mated."[9]

"It seems only too true at the present time that the physically and mentally weaker stocks are reproducing themselves at a greater rate than those of sounder physique and intelligence. This...must mean that the average physique and ability of our nation as a whole will decline unless we can prove that by a better environment we can raise the level of the community. So far as our inquiries have gone at present they show clearly the small influence of environment," we learn from Elderton.[10] Of the comparative forces of heredity and environment, or nature and nurture, Galton writes, "When nature and nurture compete for supremacy on equal terms..., the former

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7 Schiller, Ferdinand, Eugenics and Politics (Boston, 1926), 7.
8 Jennings, H. S., Intelligent Philanthropy (New York, 1925), 21.
9 Ibid., 270.
10 Elderton, Ethel M., The Relative Strength of Nature and Nurture (Edinburgh, 1915), 21.

eventual elimination of the hopelessly crippled, diseased and mentally incompetent and at the same time, increase the number of children perpetuated by the normal individuals constituting our present civilization."[13] In other words, eugenics "seeks to increase the proportion of the educable and the degree of their response to educational efforts."[14] Siegel fears that "if we concentrate all our efforts on improving our social system, by providing a better system of education, a better system of distribution of wealth..., and at the same time allow defectives to pollute our sound human stock, a time will soon arrive when we will not be in a position to appreciate and to enjoy the benefit from the improvements thus provided."[15]

One may talk idealistically about the ultimate improvement of the race and everyone will agree that it is a wonderful idea. But the opposition quickly organizes when one speaks in terms of negative eugenics, i.e. the prohibition of the propagation of the unfit. There will be all-praise to one who attempts to alleviate the ills of society but not to one who attempts to prevent them because prevention tends to curb individual liberty--and license. But if, through widespread education on

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13 Fasten, Nathan, Eugenics, June 1930, 225.
14 Davenport, Op. Cit., 14.
15 Siegel, Morris, Constructive Eugenics and Rational Marriage (Toronto, 1934), 5.

the subject, propaganda, if you please, the eugenicist's ideal can be made that of the masses, real racial progress can be made. The public must be enlightened as to the great value of a family pedigree to himself, as well as to the State and the race.[16] Inspiring in its success is the example of a similar program of general enlightenment now being carried on by the public health authorities. How many of us will tolerate faulty sewage disposal or the breaking of quarantine by our neighbor? How many of us investigate the family into which our sons and daughters are marrying further to check on their social rank and property assets? We fear contamination and resultant ills in the first place; we gullibly accept our marriage partners on "face" value, with no thought of that person's biological influence on our grandchildren. This application of biology to our social life is considered immodest or irrelevant by too many of us. We can hope, with Pearson, for the time when it will be considered just as much a crime to bring defectives into the world as it is now considered to ill-treat or inadequately provide for them. We must begin all eugenical reform from the actual state of human sentiment and must respect actual institutions. We must not scare people into the misconception that we wish to abolish the family, but

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16 Siegel, 14.

inspire them with the hope of improving it. George Bernard Shaw warns that any new idea which people do not understand frightens them. Over a score of years ago, in speaking of the reception of the new liberal divorce law just passed in the state of Washington, he said, "When journalists and bishops and American presidents and other simple people describe this Washington (State) as alarming, they are speaking as a peasant speaks of a motor car or an aeroplane when he sees one for the first time. All he means is that he is not used to is and therefore fears that it may injure him. Every advance in civilization frightens these honest folk." Then he concludes in true Shavian manner, "This is a pity; but if we were to spare their feelings we should never improve the world at all."[17]

Eugenics is mistakenly a new idea. The first eugenicist was the primitive savage who killed his sickly child. This bloody method of eugenics continues to be practiced by the Aborigines who kill all deformed children as soon as they are born, and by the savages of Guiana who kill any child that is deformed, feeble, or bothersome. The Fans kill all sickly children while in Central America it is suspected that the rarity of the

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17 Carson, 169-70.

deformed is due to infant murder. Deformed children of the Japanese are reared or killed according to the pleasure of the father.[18]

This method of eugenics improves the physical quality of the babies that survive; we are concerned with improving the physical and mental quality of all the babies that are born.

In marked contrast to the view of the extreme eugenicist, David Starr Jordan, who held that at the moment a person was conceived his capabilities were fixed, we find F. C. Constable arguing that nurture has been greatly underestimated. He doesn't feel we know enough about heredity to try to improve the race by marriage selection, saying "Illustrious, even eminent men cannot be bred, because we know practically nothing about the laws of their production."[19] He continues, "However naturally gifted the son of a laborer may be, education until thirteen at a board school and then work at the plough do not tend to evolve in him zeal and power of intellectual work as does a higher form of education with more invigorating social surroundings."[20] He advises us to tap the full power of the individual adding that "at

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18 Roper, Allen G., Ancient Eugenics (Oxford, 1913), 8.
19 Constable, F. C. Poverty and Hereditary Genius (London, 1905), 19.
20 Ibid., 31.

all periods of man's evolution there is invariably a reserve of capacity or force in human natural ability, environment being always restrictive on the full action--achievement--of natural ability...only in change of environment can there be any hope for raising the level of the average ability of the race."[21]

Constable would advocate general education, rather than selective breeding, to raise the ability of mankind. He writes, "it is also a fact that for any individual to produce his full output of labor, he must be what we term educated...It is, then, to the advantage of those interested in the welfare of any State that the labor of each individual should be rendered as effective as possible."[22]

Mr. Constable and his brother environmentalists will realize that there is a limit to the miracles a favorable environment and an education can achieve. Thorough training and hard work may turn the ambitious boy into a man of science, a doctor, or a teacher, but the outstanding men in every field are those who have the advantage of superior mental endowment. Likewise, there are some persons whose lack of mental equipment will not permit them to make any academic or occupational progress. It is these who slow down the world's progress

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21 Constable, 19.
22 Ibid., viii.

because of the care, the time and the energy they require of the abler persons who must, by our standards of civilization, nurse them and their ever increasing descendants, through their muddled attempts of living. Dr. Farrar of Canada says, "The greatest single factor in social and economic inefficiency is mental defectiveness."[23] For those who can not care for themselves, to say nothing of the general welfare and progress of mankind, let us recommend that they step aside, figuratively speaking, by not further reproducing their kind, so that those of average and special ability may work unimpeded for better conditions, social, economic, spiritual and material.

This paper deals with marriage laws enacted by certain of the United States whose aim it is to limit the procreation of the unfit, thereby removing the burden of their care from the fit, and encouraging their propagation in turn. Evidence of the kind which legislators have had available to them in enacting eugenic legislation and some of the background of eugenic theory will be presented. Any study of statutes in the field of social legislation should be paralleled by an analysis of court decisions interpreting the statutes. Only by

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23 Stowe, Medical Aspects of Heredity, M. D. thesis, unpublished, University of Wisconsin, 1931, 5.

such a procedure can "the law" of any jurisdiction be known. In this thesis the statutes alone have been summarized and digested. A compilation and comparison of statutes regulating the marriage and procreation of these so-called "undesirables" is included.

CHAPTER II

THE PRESENT TREND TOWARD RACE DEGENERATION

Man breeds from his worst,
but he doesn't have to.
--A. E. Wiggam, Next Age of Man

The Spartans were vitally interested in developing a race of physically perfect people in order not to be exterminated by their more numerous enemies. To this end, while they did not restrict bride choice, they imposed penalties for celibacy, for late marriage, and the greatest of all for bad marriage.[1] That the Spartan method of discouraging the propagation of the unfit was effective is abundantly evident and a matter of history. That we need to be more concerned with the product of our now uncontrolled breeding is no secret to any one who would review the increasing numbers of the insane, the feeble-minded and the criminal population; to mention just a few of the undesirable classes of society which are forming a larger and larger proportion of our population. In 1890, the United States listed 118 per 100,000 as feeble-minded, while by 1920 this number had increased to 220. The numbers of the insane increased eleven percent from 1904 to 1910 in the United States. The expectancy of mental disease in New York in 1930 was that one of every 17.5

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1 Roper, Ancient Eugenics, 18.

males, and one of every 18 females, would be treated in some institution for mental disorder during their lifetimes.[2] The insane doubled in number in Canada between 1871 and 1931. Canada's insane asylum inmates had increased six times during the same period.[3] The fact that statistics are more carefully and widely gathered now than before 1900 may account for an apparent increase. Two additional factors are easily responsible for the real increase: (1) the more solicitous care of the feeble-minded, especially feeble-minded children, as contrasted to the mentally able, and (2) greater impairment of reasoning power with increased longevity.

The curtailment of families by the middle class in order that their children may have all the advantages of the upper class; the selfish limitation of families by the upper classes; and the higher marrying age among the educated is to be contrasted with the still large families of our paupers and mental deficients. The army officers and clergy are no longer self perpetuating.[4] About our race future, Dr. Vaughan says, "Without being an alarmist or pessimist, I wish to say that the American

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2 Malzberg, Benjamin, "The Expectation of Mental Disease in New York City in 1930", Mental Hygiene, April 1937, 280.
3 Siegel, Constructive Eugenics and Rational Marriage, 59.
4 Schiller, Eugenics and Politics, 16.

people is threatened with the spread of mental and moral degeneration through the multiplication of the unfit."[5]

Keller insists that the real problem of eugenics is the "prevention of marriage or at least procreation on the part of the hopelessly unfit, as of insane and feeble-minded, or those with other hopelessly impaired physiques."[6] Twenty-five percent of all college graduates do not marry; while forty percent of women college graduates remain celibate and the group in the general population which ranks lowest in intellect has eight children on the average.[7] Schiller tells us that "society is now so ordered that in every generation it sheds one-half of the classes it itself values most highly, and supplies their places with the offspring of the feeble-minded and casual labor classes."[8] The last war found one out of every three men examined rejected on the ground of physical fitness. England had to reject two out of three.[9] And the fit were sent off to be killed while from the progeny of the rejected third we are left to repopulate our country.

War, economic and social pressure, and increasing educational standards are not the only disgenic forces. Philanthropy often serves in that capacity. As. Dr. E. A.

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5 Vaughan, "Eugenics from the Point of View of the Physician", Twelve University Lectures (New York, 1914), 49.
6 Keller, "Eugenics and Its Social Limitations", Twelve University Lectures, 285.
7 Gleason, R. Homer, "Wanted: A Better Humanity", Eugenics, August 1929, 10.
8 Schiller, Op. Cit., 15.
9 Saleeby, C. W., The Eugenic Prospect (London, 1921), 97.

Ross has so clearly pointed out, "Once almsgiving is general and regular enough for the parasite to count upon it, then, if being destitute qualifies one to claim alms, there are those who will idle...trusting to the generosity of the charitable to extricate them from the inevitable consequences of such conduct...dependent couples who are allowed so much for each additional child will regard the tenth baby as an asset instead of the liability it is to the self-supporting pair...If having a wife qualifies, reckless marriages are encouraged and therewith their natural results."[10] Roper is, perhaps, even more emphatic: "Instead of sacrificing the unfit in the interests of the fit, we have employed every resource of modern science to keep alight the feeble flame of life in the baseborn child of a degenerate parent."[11] How can we hope for any improvement in our stocks when we review the existing situation, realizing at the same time that "a society which wishes to improve must so organize itself as to renew itself from its better rather its worse stocks,"[12] or, in the words of Popenoe, the "chief requirement for race survival is that the superior part of the race should equal or surpass the inferior part in fecundity."[13] Philanthropy is not to be utterly con-

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10. Ross, "Philanthropy and the Sociologist", in Intelligent Philanthropy, 226.
11 Roper, Ancient Eugenics, 5.
12 Schiller, Eugenics and Civilization, 91.
13 Popenoe and Johnson, Applied Eugenics, 237.

demned, however, but can serve a real biological purpose, as outlined by Jennings, "charitable organizations ..., in so far as they operate to remove the environmental conditions that induce defectiveness and that thereby mask the effect of defective genes, are effective agencies tending toward the ultimate improvement of the racial constitution. It is desirable that they become strongly conscious of this aim, as well as of their aim to make life worth living for the present generation, in order that they co-operate in detail with all intelligent efforts toward improving the quality of the future generations of humanity."[14] So far that has not been the case as the constant number of pauper, throughout the period of social reform. Certainly, a large proportion of those of ability have been helped to a self-supporting status but newly generated numbers have kept the quantity the same.[15]

What is the solution to this problem? Havelock Ellis offers education and increased responsibility of the individual. "It is in the development of individual conscience, guided by a new sense of responsibility, and informed by a new knowledge, that any regeneration of the race must be rooted."[16] Schiller concurs in this

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14 Jennings, "Biological Aspects of Charity", in Intelligent Philanthropy, 298.
15 Ellis, Havelock, The Problem of Race Regeneration (New York, 1911), 27.
16 Ibid., 61.

view: "The individual does not merely take things as they come and accept their consequences; he does not scorn to take thought for the morrow, to set before himself aims to realize and to ponder on the means available; neither does the statesman assume a merely passive policy with regard to the effects of national rivalry or of the forces of Nature. Why then should he uncomplainingly accept the social material as it comes, the uncontrolled output of random breeding? Why should he regard it as lying beyond his province to devise means by which the national stock may be improved or prevented from deteriorating? Especially when he is called upon, in ever growing measure, to provide for the sustenance, health, and education of the social personnel which is recruited in so fortuitous a fashion."[17]

The Heredity of Mental Defects

"In sexually reproduced organisms the kinds of individuals that are produced depend upon the kind of matings which take place among the progenitors," writes S. J. Holmes.[18] Again referring to the role of heredity, he writes, "That all sorts of animals and all sorts of plants from the highest down to and probably including

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17 Schiller, Eugenics and Politics, 39.
18 Holmes, Human Genetics and Its Social Import (New York, 1936), 188.

many one-celled organisms should transmit their hereditary qualities in precisely the same manner is a very remarkable fact...it is scarcely credible that man, whose differences from the anthropoid apes entitle him at most to membership in a distinct family, should differ from other organisms in the way in which his hereditary traits are transmitted."[19] Concurring heartily in this viewpoint is Companella who, nearly three hundred years before Galton, in a description of his fanciful idealistic City of the Sun, observed that one of the rulers of the city was Love, and then remarked, "Love is foremost in attending to the charge of the race. He sees that men and women are so joined together that they bring forth the best offspring. Indeed, they laugh at us who exhibit a studious care for our breed of horses and dogs, but neglect the breeding of human beings."[20]

We all recognize the law of heredity as operating in our physical makeup and eagerly look for resemblances to parents or other close relatives in babies and children, so sure are we of the unfallibility of Friar Mendel's discovery. Mental similarities are not as

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19 Holmes, 188.
20 Fairchild, "A Self Controlled Population", Survey Graphic, April 1, 1931, 31.

quickly and as obviously apparent so often we do not stop to think of the role that heredity plays in our mental capacities. Albert Wiggam has written, "the mental...traits of man are inherited by the same mechanisms and in just about the same degree as are his physical traits."[21] Expressing agreement with this viewpoint we find, to mention a few, such men as Dr. Morris Siegel, Charles B. Davenport, David Starr Jordan, Professor H. T. Webber, Dr. Victor Vaughan, Francis Galton and Dr. A. F. Tregold.

Galton is responsible for showing us the, perhaps overestimated, role of heredity among men of genius. It is equally operative in determining the propagation of mental defectives. Dr. Siegel writes, "It is in the interest of society and posterity to forbid parenthood among the diseased and defectives if they are likely to transmit their defects to offspring. Outstanding among those as mostly undesirable to propagate are: the feeble-minded, the insane, the epileptic, the habitual criminal, the tubercular, the blind and the deaf mute."[22] Dr. A. F. Tregold of England claims that eighty percent of all mental defect is due to inheritance.[23] Penrose writes that "subcultural mental deficiency hardly ranks

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21 Wiggam, Next Age of Man, 129.
22 Siegel, 53.
23 Stowe, Medical Aspects of Heredity, 5.

as a disease. We, therefore, cannot expect to cure it."[24]

Goddard has given us the first law of inheritance of mental ability, namely, that two mentally defective parents will produce only mentally defective offspring. To this Davenport adds a second: No imbecile is born except of parents who, if not mentally defective themselves, carry mental defect in their germ plasm. The latter is in accord with Mercier's law of sanguinity, to-wit, two normal parents may have unstable offspring due to carriers of mental defects in one or both parents. Some of us have encountered the "copper-child of golden parents."[25]

One-third of one percent of the population is feeble-minded, writes H. S. Jennings.[26] He further points out that eleven percent of the feeble-minded persons of any generation come from the mating of feeble-minded persons of the previous generation, and eight percent from the mating of the carrier group. Of the magnitude of the problem of the feeble-minded, H. H. Laughlin writes, "The greatest of all eugenical problems in reference to cutting off the lower levels of human society consists in devising a practicable means for eliminating hereditary feeble-mindedness."[27]

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25 Siegel, 423.
26 Jennings, "Biological Aspects of Charity", 298.
27 Laughlin, The Scope of the Committee's Work (New York, 1914), 18.

As we know, there are two types of feeble-mindedness: primary amentia which is due to heredity, as stated, and secondary amentia which is due to injury or other environmental reasons. The first type, with which we are herein concerned, is in the majority, forming sixty percent of the feeble-minded group according to Dr. Siegel.[28] A study by Dr. Penrose showed the proportion of defective children increased as the intelligence of the parents declined.[29]

S. J. Holmes reports interesting studies of peculiar types of imbecility and idiocy hereditary only among certain inbred groups. Amauratic family idiocy, found only among Jews, is manifest by blindness, increasing nervous disorders, and terminates in death during the first year of life.[30] A study of an isolated Swedish community revealed a group of low-grade imbeciles who could not learn to read or write and could only talk in halting monosyllables.[31] These children, who were not allowed to procreate, were born of normal parents who, however, carried defective germ plasm. Madge Thurlow Macklin holds mongolian idiocy to be hereditary.[31a] Of recessive defective mental traits Holmes writes, "The

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28 Siegel, 56.
29 Holmes, 134.
30 Ibid., 130.
31 Ibid., 131.
31a Macklin, Madge T., "The Exhaustion Theory and Mongolian Idiocy", Eugenics, July 1929, 13.

frequency with which a trait runs in families is not necessarily an index to the extent to which it is due to heredity."[32]

Mental defectives tend to mate with their own kind as seen in the case studies of the Jukes, the Kallikaks, the Zeros, the Nams, and the Tribe of Ishmael. The families of the feeble-minded are unrestricted as to size and both the men and women of this group are notoriously lax in their morals and extremely careless in their extra marital sex relationships. We have seen the result in the increasing numbers of our feeble-minded population.

A more insidious problem is that of the insane for "most kinds of hereditary insanity depend on recessive or partly recessive factors, and hence the majority of the individuals who owe their insanity to heredity come from parents who are not insane."[33] Dr. Rosanoff feels that "It is the unstable organization that is inherited,"[34] or, in the words of Dr. Myerson, "the schizoid personality is inherited rather than insanity."[35] In the bustle and strain of our feverish and economically unstable life, such inherited weakness is much more likely to result in emotional or mental instability than would

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32 Holmes, 131.
33 Ibid., 138.
34 Myerson, The Inheritance of Mental Diseases (Baltimore, 1925), 22.
35 Ibid., 281.

be the case if we were an easy going people. The latest statistics show that one out of every twenty-two persons becomes mentally ill sometime during his or her lifetime.[36]

Complicating the problem of insanity is the fact that there are so many types and degrees of insanity: the manic depressive, the paranoic, the dementia praecox, Huntington's chorea, and less severe manifestations known as nervous disorders, neuroses, and psycho-neuroses.

Dr. Myerson has found that dementia praecox breeds true and that many descendants of insanity patients are of lower mentality than their parents. Dementia praecox seems to cause a definite mental deterioration. Myerson agrees with Kraepelin's suggestion that many feeble-minded persons are really congenital dementia praecox patients with dementia as the prominent symptom.[37] Luther, Krueger, Jolly, and Albrecht find that insane descendants of patients with involution melancholia and involution psychoses suffer practically always with dementia praecox.[38] Of eighteen cases of dementia praecox studied by Rosanoff, fourteen descendants had dementia praecox, two suffered from manic-depression and two from

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36 "Encouragement", Scientific American, February 1937, 132
37 Myerson, Op. Cit., 215.
38 Ibid., 220.

imbecility and alcoholism. Rosanoff observed that moral imbecility, feeble-mindedness and epilepsy were often found among descendants of the insane.[39]

Another mental disorder which results in mental deterioration is Huntington's chorea. Chorea, due to specific gene differences, Popenoe tells us, is manifest by lack of muscular control. However, the dementing factor in a chorea strain may be inherited independently of other symptoms.[40] Myerson reports the results of a study by Luther in which the analysis of the descendants of sixty two manic depressive patients was made, with the following results: There were 43 manics, 22 dementia praecox cases, 6 of idiocy and imbecility, 2 of paranoia, 2 of epilepsy, and 1 of amentia, totaling seventy seven.[41] The paranoid also seems to breed dementia praecox in descendants[42] while studies by Rudeh, Cannon and Rosanoff, Rosanoff and Orr, Jolly and Witterman reached the conclusion that dementia praecox was inherited as a simple Mendelian recessive, as is Huntington's chorea.[43]

Of epilepsy, S. J. Holmes writes, "It is likely that the different kinds of epilepsy are inherited in different ways."[44] Like feeble-mindedness, some kinds

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39 Myerson, Op. Cit., 215
40 Davenport, "Huntington's Chorea in Relation to Heredity and Eugenics", (New York, 1916), 202.
41 Myerson, Op. Cit., 218.
42 Ibid., 214.
43 Holmes, Op. Cit., 139.
44 Ibid., 144.

of epilepsy are undoubtedly caused by injury and disease. However, "Epilepsy, like insanity and feeble-mindedness, has long been observed to run in families to a certain extent, although it often appears quite sporadically for reasons that cannot be explained."[45]

Because feeble-mindedness, imbecility, insanity, epilepsy and probably mongolism are maintained in our population through hereditary channels, the legislative efforts to prohibit the marriage, and subsequent continuation, of these defective strains seem a logical point of attack on this problem.

45. ibid., p. 143

CHAPTER III

THE ROLE OF LEGISLATION IN THE CONTROL OF THE DEFECTIVE

Galton predicted that the time would come when eugenic considerations would become a factor in religion, and that religious conceptions would be interpreted in the light of a sense of social needs so enlarged as to include the needs of the race which is to come. If that time has not yet arrived, at least we have made progress in that direction, enough so that Fairchild could write enthusiastically in 1931, "an intelligent control of population growth by society itself has already dawned and will grow rapidly brighter."[1]

Because of the now widespread knowledge of birth control, we find intelligent couples voluntarily limiting their families. Of the large group who, often even unable to care for themselves yet continue to have families of eight and ten, Davenport has written, "The lowest stratum of society has, on the other hand, neither intelligence nor self-control enough to justify the State to leave its matings in their own hands."[2]

The control of family comes, though only in part, through the state's regulation of marriages. At the

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1 Fairchild, Op. Cit., 64.
2 Davenport, Twelve University Lectures, 10.

present time, forty-one states prohibit marriage of the insane and feeble-minded, seventeen prohibit marriage of epileptics, twenty-two regulate the marriage of persons having a venereal disease in a communicable form, four prohibit marriages of confirmed drunkards, five of tuberculous persons, and thirty had legislators who, at one time or another, felt that they were saving the race from degeneration by passing laws which prohibited the intermarriage of whites with 'inferior' races, such as the negro, the Mongolian peoples, the Malays and the Indians. (See chart Appendix, 121a).

The aim of such marriage laws is to protect the rights of the consort who would suffer through helplessness or ignorance, and, secondly, to prevent legal consummation of such matings as will produce physically and mentally handicapped children. Legislation is apt to be thought of as a panacea for all social evils, a very satisfactory one because it is cheap. Often, one of the most beneficial aspects of legislation is the public education attendant upon the debate and discussion of the bills as passed, or rejected, by the legislature. This has been particularly true in respect to laws regulating the marriage of the venereally diseased. Persons who had been wholly, or dangerously, ignorant about the nature and consequences of these so-called 'social diseases' were enlightened and protected. Legislative

discussion has tended to remove the 'sub rosa' aspect and encourage frank and open consideration of the problem.

The forty-eight states, unfortunately, agree only in prohibiting incestuous and bigamous marriage. The National Conference of Uniform State Legislation which met in Grand Rapids in 1933 made recommendations for making uniform other laws but not those of marriage, concluding that, "from the practical side many objections militate against doing anything."[3] Only through the diligent educational efforts, verbal and written, of the eugenicists fired by an ideal, of social workers who can see and describe the evils encouraged by the laissez faire policy and the gratifying benefits of marriage regulation, can we hope for further needed social legislation.

In Platonistic style, Schiller has written of the unfit, "I would do everything for them, except allow them to rear children whose life will not be worth the living."[4] For he realized, with Jennings, that "There is only one way to end the career of defective genes; that is, for the individual bearing them to refrain from propagation."[5] It is the realization of this principal

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3 "Uniform Marriage Laws", Literary Digest, September 16, 1933, 16.
4 Schiller, Op. Cit., 161.
5 Jennings, Op. Cit., 285.

enforced by the burden of their support, which has prompted the states to enact such eugenic marriage laws as we now have.

The Feeble-minded and Insane

The problem of feeble-mindedness is important to the sociologist because of the large number of recruits from this group to the ranks of the pauper, the sexually amoral, the immoral, the criminal, the drunkard, the drug addict, the alcoholic, to enumerate some of the groups of socially defective persons whose population is or may be largely mentally defective. The high grade moron is a particular problem because the women of this group are often attractive enough to claim the attention of unscrupulous men and morally and emotionally unstable enough to become easy victims. The men of this group are not such a moral menace because they do not have enough to offer women, but neither can they find a very useful or remunerative place in society and easily fall into petty thievery and other criminal practices.

The Royal Commission of England has reported that the feeble-minded are increasing at twice the rate of the general population and evidence gathered in the United States indicates that conditions here are just

as bad.[6] Of the feeble-minded group, the high grade moron is the most expensive to society because they are the least easily controlled and the most capable of mal-practice.

Jennings has written, "to stop the propagation of the feeble-minded appears to be clearly within the bounds of practicality."[7] While we may agree that "Feeble-minded persons...should not be allowed the opportunity to reproduce their kind..."[8] the best means of stopping their propagation is still a matter of debate. The fact that forty-one states have taken steps intended to lessen the burden, and number, of this group by attempted control of their marriage or extra-marital sexual relationships, indicates the widespread belief in the hereditability of this defect, despite recent investigations which have shown that a certain type of mental deficient, the cretin, can be cured by the administration of thyroid extract, the lack of which has caused his unfortunate condition.[9]

Because the marriage laws regarding the feeble-minded and the insane are, in every case, grouped together, they shall be so considered. Indeed, these two mental afflictions are often referred to by one

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6 Siegel, Op. Cit., 55.
7 Jennings, Op. Cit., 287.
8 Rice, Racial Hygiene, 289.
9 Roll, Edgar A., "Children Who Never Grow Up", Hygeia, June 1934, 332.

term, "unsoundness of mind" or "incapable of understanding". This is so, even though the idea of insanity is not at all parallel to the idea of mental defect. There may be years of mental disease, or incipient insanity, but no debilitating insanity in that the person can meet the standards of the normal man, which is not true of the mentally deficient. Here again the matter of heredity is a consideration in legislation. Idaho, Indiana, Kansas , Michigan and Nebraska limit their prohibition to persons afflicted with hereditary feeble-mindedness, epilepsy or insanity, although in different terms,[10] while Indiana and Pennsylvania are obviously concerned primarily with the ability of the person to support his family.[11] Only three states, Connecticut, Indiana, and Louisiana concern themselves with extra-marital relationships which might well result in additions to the feeble-minded population.

There are two general methods of outlawing the marriage of these defectives: (1) by prohibiting the marriage and the issuance of license, and imposing fines for violations; (2) by declaring such marriages void. Professor William Herbert Page of the University of Wisconsin Law School feels that the latter laws are the stronger. They however, turn out to be only voidable in

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10 Appendix,
11 Appendix,

the vast majority of cases. Arkansas, the District of Columbia, Nevada, New York, Oregon, Pennsylvania, South Carolina, West Virginia, and Minnesota decree that such marriages shall be void from the time the nullity is so declared by a decree of court having proper authority, while the laws of Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Oklahoma, Maine, Vermont and Washington say that such marriages may be annulled or declared void if one party was insane or idiotic at the time of marriage. Tennessee does not permit failure to comply with the requirements of the law to affect the validity of any marriage consummated by ceremony. The prevailing assumption is that the marriage is valid unless the contrary is clearly proved.

The laws, in the main, are drawn so that the innocent or incapacitated person will be protected; in the words of the District of Columbia statute, "no such proceedings (for annullment or voidance) shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and wilfully contracted any marriage declared illegal." Minnesota, Montana, Kansas, Michigan, Delaware, North Dakota, Oregon, Washington, Wyoming, Idaho, Nebraska, Oklahoma concur in this viewpoint, permitting only such action to be instituted by the next friend, or some other person, on behalf of the innocent party. Nebraska,

Nevada, Michigan, Vermont and Wyoming permit the lunatic to void his or her marriage after return to reason. In no case, however, can the marriage be voided if the parties voluntarily cohabit after return to reason. Massachusetts, North Carolina, North Dakota, South Dakota and Montana limit the period of investigation of validity to the lifetime of the individual concerned, while Vermont permits a "petition to lunacy" during the lifetime of either party as well as afterwards. Maine and Massachusetts provide that, in case the validity of any marriage is doubted, either party may file libel for annullment but they must abide by the decision of the court. Pennsylvania and South Carolina permit either party to bring suit of avoidance.

Detailed equitable procedure whereby anyone refused a license on grounds of incompetency may have the question judicially determined is provided by Iowa, New Hampshire, Pennsylvania, Virginia, South Carolina, and Indiana. In Idaho the Board of Eugenics investigates and reports. Maine and Virginia give opportunity to any one who might wish to object to a marriage on eugenic grounds to file a formal protest. In Maine the final decision is made by two justices of the peace at no cost to the marriage applicant unless the decision is against him; then he must pay the costs of the investigation.

In Virginia the protesting person may appear before the clerk and present evidence why the license should not be granted. All appeal is at the cost of the appellant and goes to the city or corporation court and may be appealed from there to the court of appeals of Virginia. In Iowa and New Hampshire, lists of persons incapable of marriage are furnished all county clerks who are not permitted to issue a license to any whose names are found thereon. In Iowa, the list is furnished by the Board of Control while in New Hampshire the superintendents of state and private schools report all names of epileptics, imbeciles, feeble-minded, idiotic or insane persons who have left school or have become fourteen years of age.

The matter of penalties to all parties who may break the laws prohibiting the marriage of the insane and feeble-minded are graphically shown in the chart found on page 73a of the appendix.

In Illinois, California, Michigan, Minnesota, North Dakota, Oklahoma, New Hampshire, Mississippi, Indiana, Washington, Idaho and New Jersey the clerk who issues the license, or the solemnizer, shall, or may, examine the applicants on oath to determine if there are any legal impediments to the marriage in case he is in doubt. Virginia permits the clerk to require a medical examination of the applicants in cases where doubt

arises. New Jersey, Delaware and Michigan punish the parties to the marriage for perjury if they attest falsely to any questions asked them in the marriage application. In Kentucky and Connecticut, besides providing penalties for the parties to the unlawful marriage, the clerk who may issue the license and the solemnizer of such, imposes a fine on any one who "aids or abets" such a marriage. No penalties are prescribed by California, the District of Columbia, Iowa, Montana, Vermont and West Virginia.

Arkansas, Idaho, Kentucky, Montana, Nebraska, North Dakota and Wyoming recognize marriages incurred outside of the state if they are valid where contracted, even though against the laws of the state of which the parties are residents. Twelve states: Connecticut, the District of Columbia, Georgia, Illinois, Indiana, Maine, Massachusetts, Utah, Vermont, Virginia, West Virginia, and Wisconsin provide against this contingency by expressly invalidating all marriages made in any foreign state or country. In practice, however, such marriages are good. In only one state, Rhode Island, are children born to parents, one or both of whom come under the law prohibiting marriage of mental defectives, illegitimate.

Seven states: Connecticut, Kansas, New Hampshire, North Dakota, Utah, Virginia, and Washington permit marriages of the insane, feeble-minded and epileptic

if the woman is over forty-five years of age. Only two: Nebraska and New Hampshire, provide for legal marriage of such defectives who have been sterilized.

Epileptics

Epilepsy is characterized by the recurrence of epileptic fits or seizures in which the victim loses consciousness, may froth at the mouth, bite his tongue or go through muscular contortions; and it is often accompanied by mental peculiarities, irritability, defective memory or criminal tendencies, and often ends in dementia or mania.[12] Davenport holds the theory that in a large proportion of the epilepsy cases there is some nervous defect on both sides of the family which may appear as epilepsy, feeble-mindedness, insanity, extreme nervousness, migraine, alcoholism, sex immorality, or lack of moral sense.[13]

Not all students of the problem agree with Davenport on the heredibility of epilepsy. Dr. Calvert Stein of Monson State Hospital at Palmer, Massachusetts so concluded after his study of six hundred epileptics and their families as compared to one hundred and ninety

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12 Siegel, Op. Cit., 58.
13 Davenport, Heredity of Constitutional Mental Disorders, (New York, 1920), 305.

normal individuals. Dr. Alfred Gordon attributes epilepsy to an injury of the pituitary gland.[14] Other theories are that it results from neurosyphilis, from brain tumors, is the result of arterial disease, of multiple sclerosis, or a toxic condition brought on by alcoholism, bad diet, ear and nose conditions, pregnancy or plumbism. Some doctors hold that epilepsy is idiopathic, i.e., constitutional and innate, while others believe in the bacillus theory. Myerson is alligned against Davenport and others who favor heredity as the cause of epilepsy.

Be that as it may, seventeen states have laws prohibiting the marriage of eplieptics. Virginia and Nebraska restrict such limitations to hereditary epliepsy. In the words of the Nebraska statute, to "one adjudged afflicted with hereditary epilepsy."[15] The Virginia statutes interpret the term 'hereditary epileptic' to "be construed to mean any epileptic either of whose parents is or has been an epileptic."[16] Michigan is concerned with heritage of possible issue of marriages of which one, or both parties are epileptic and requires persons who have been confined as epileptics or so adjudged "by a court of competent jurisdiction" to procure a

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15 Compiled Statutes of Nebraska, 1929, ch. 42, sec. 102.

16 Virginia Code of 1930, sec. 5088a, par. 1.

"verified certificate from two (2) regularly licensed physicians of this state that such person has been completely cured of such...epilepsy...and that there is no probability that such person will transmit any of such defects or disabilities to the issue of such marriage."[17] The penalties for illegal contracting and solemnizing of such prohibited marriages are the same as those imposed in the case of the insane and feeble-minded.

Seven states, Connecticut, Kansas, New Hampshire, North Dakota, Utah, Virginia and Washington permit marriage of an epileptic if the female party to the proposed union is over forty-five years of age. The supposition is, of course, that there will be no children, which supposition is not infallible.

Nebraska and New Hampshire permit marriage of epileptics who have been sterilized. It is in the extension of this law, applicable to the feeble-minded and insane, wherein lies the happy solution to the marital problem of the defectives.

Four states have marriage evasion laws, refusing to recognize the out-of-state marriage of the epileptic while three, Connecticut, Indiana and Louisiana forbid and punish extra-marital relationships of these defectives.

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17 Compiled Laws of the State of Michigan, 1929, sec. 12695.

Tuberculous Persons

Tuberculosis is not hereditary in the ordinary sense, but susceptibility seems to run in families. The child of tuberculous parents is born with certain peculiarity of tissue more liable to invasion of the tubercle bacillus, or, as we might say, he inherits a low grade immunity.[18] Robert H. Wolcott insists that the effects of the disease are transmitted even if the disease itself is not.[19]

Three states expressly prohibit the marriage of the tubercular. North Carolina confines its prohibition to one having tuberculosis "in its infectious stages,"[20] while North Dakota and Washington prohibit marriage when either party is afflicted with the disease "in its advanced stages."[21] Indiana is indirectly regulatory in outlawing marriages where either party is "afflicted with a transmissible disease" while Pennsylvania requires that the marriage applicants declare that they do not have any transmissible disease before a license can be issued.

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18 Siegel, Op. Cit., 59.
19 Wolcott, "Eugenics as Viewed by the Zoologist", from Twelve University Lectures, 38.
20 North Carolina Code of 1935.
21 Remington's Revised Statutes of Washington, 1931, sec. 8439, and Compiled Laws of North Dakota, 1913, sec. 4373.

Drunkards

During the first decade of this century Sir Victor Horsley and Dr. Mary Sturge engaged in a bitter battle of pamphlets with Karl Person regarding the question of whether or not alcoholism was hereditary. Horsley and Sturge took the affirmative side and Pearson vehemently opposed them. The contention of the former was that alcoholism on the part of the father or mother caused defects of mind in the children as well as moral instability, lack of normal emotional control, idiocy and epliepsy. Pearson made a study, accused of being superficially done, in which he proved that the offspring of alcoholic parents were physically superior to those of non-alcoholic parents. The alcoholics were of superior stock and transmitted their heritage to their children, unimpaired, he argued. Today the hereditability of alcoholism is not a question which elicits much popular interest, but the majority opinion is probably in agreement with Richard Peabody who holds that "What unquestionably is inherited is a nervous system which proves to be non-resistant to alcohol."[22] Dr. Stowe is of the opinion that "chronic alcoholism (on the part of

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22 Peabody, The Common Sense of Drinking (Boston, 1931), 15.

the parents) and other poisoning will often cause the offspring to be mentally deficient. However, this condition is not actually hereditary and is not carried down the following generations."[23]

Mrs. Mary Scharlieb feels the problem to be that of environment and says that the alcohol in mother's milk disarranges the proper proportions of protein, sugar and fat, thus giving the child the disadvantages of a bad start due to the deleterious effect of improper nourishment on growing cells. The child also suffers in that an alcoholic mother often loses the ability to make the most of her resources. Even Pearson attests to the fact that the death rate among children of alcoholic parents is eight percent higher than that found in children of abstainers.[24] Peabody reports that the investigation of inheritance of alcoholics shows neurotic history on at least one side of the family and often in an extreme degree.[25]

It has been noted that one rarely, if ever, finds a drunkard among the Jewish people. The explanation has been offered, and held by such men as Dr. E. A. Ross, that those who have a weakness for alcohol have been

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23 Stowe, Op. Cit., 4.
24 Pearson, An Attempt to Correct some of the Misstatements, etc. (London, 1911), 7.
25 Peabody, Op. Cit., 15.

weeded out by years of exposure to an abundant liquor supply and unrestricted by moral admonitions against its use. Those whose alcoholic appetite was uncontrollable have been bred out while the descendants of the stronger stock are free from such taint. The uncontrolled thirst for liquor among savages is contrasted to the independence of peoples who have long been exposed to it. Adam Smith long ago observed that the French of the wine growing districts were much more temperate than their northern compatriots.[26]

Another theory has been proved experimentally by T. Swann Harding, namely, that among alcoholic parents "the inferior germ cells are killed off by alcohol before birth, the progeny actually born being perhaps a little superior to the average."[27] Florence Durham also feels that parental alcohol has little if any effect on germ cells.[28] A study made by Ethel Elderton convinced her that drink in parents has no effect on the intellect of boys and girls, and practically none of the height and weight of boys. Girls, who have to bear the responsibility of the home often in the case of an alcoholic mother, are a little smaller than those who do not have this responsibility.[29] Miss Elderton also

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26 Reid, Alcoholism, A Study in Heredity (London, 1901), 107.

27 Harding, "Are We Breeding Weaklings?" American Journal of Sociology, March 1937, 676.

tells of a special school at Manchester in which the children of alcoholics had all the material advantages of those of non-alcoholic parentage, and the sons and daughters of drunkards rated the higher in intellect and health.[30] More recently an editorial appearing in an issue of Hygeia stated that the mental faculties are not affected when parents drink.[31]

Too often it has been noted that some defective was addicted to alcohol and the surmise drawn that it was the cause of his inferior mental or physical condition. Sir Frederick W. Mott aptly states that it is more probable that the insane inebriates have taken to drink because of insanity rather than having become insane because of drink. It is of interest to note that Pearson and Elderton found that only twenty-four percent of the fathers of mentally defective children studied in Manchester were drinkers of alcohol to any degree.[32]

Whether convinced that drunkards would transmit their weakness to their offspring or by bad example produce the same result, or fearful that addicts of alcohol would be incapable of supporting their families, leaving the burden to the state we find four state

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28 Durham, Alcohol and Inheritance (London, 1932), 6.
29 Elderton, Relative Strength of Nature and Nurture (Edinburgh, 1915), 17.
30 Ibid.,17
31 Hygeia, March 1936, 285.

statutes prohibiting the marriage of drunkards, namely, Delaware, North Dakota, Ohio and Washington. None of the laws are of recent origin.

Reid has commented that all races which alcohol has afflicted have grown less and less prone to excessive indulgence. Perhaps that is what is happening to our nation.[33]

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32 Pearson and Elderton, A Second Study of the Influence of Parental Alcoholism on the Physique and Ability of The Offspring (London, 1910), 6.

33 Reid, Op. Cit., 109.

CHAPTER IV

THE INFLUENCE OF THE EUGENIC MARRIAGE LAW IN THE CONTROL OF VENEREAL DISEASE

In a consideration of eugenic marriage laws requiring a physical examination to ascertain the freedom of the marriage candidate from venereal disease, and the prohibition of marriage if a diseased condition is found, we must first review the venereal disease problem; its sociological importance, economic importance, incidence, age groups most frequently involved, and then consider how much eugenic marriage laws would aid in the control of such disease and tend to alleviate some of the attendant evil.

Edward L. Keyes Jr. has said that "Venereal diseases have added to the burdens of the nation 25 percent of its blind babies and at least 10 percent of its insane. They have been a major element in found the specialties of gynecology and urology in medicine and support both in affluence."[1] Colonel Mans, Chief Surgeon of the United States army has stated that "The demoralizing influences of alcoholism and desertion compare but feebly with the direful and far reaching

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1 Friedman, Bernard, The Problem of Reporting Venereal Disease, M. D. Thesis, unpublished, University of Wisconsin, 1934, 1.

results of disease of this character."[2] President Wilbur in an address to the American Medical Association predicted that "if we could protect children during prenatal life from infections with syphilis we would soon replace the loss of life from the Great War."[3]

Venereal diseases are accepted as the most important cause of morbidity and mortality in the United States today. Syphilis alone causes 8,700 deaths annually in mental institutions and necessitates the constant institutional care of 12,300 persons from general paresis and syphilis of the nervous system. Two to five percent of all cases of syphilis terminate in paralysis and, in some instances, despite the best treatment. Syphilis is the most important single factor in heart disease and causes a considerable percentage of fatal deaths. Syphilis pads the compensation payments in industry and is directly responsible for industrial accidents when workers' nervous systems have been so affected that their muscular co-ordination and mental alertness are impaired. Syphilitic victims form four percent of the total population of insane institutions and 8.78 percent of all first admissions. Syphilis cuts

2 Curreri, Anthony Rudolph, Prophylaxis in the Control of Venereal Diseases, Its Development, Administration, and Effects on Society, M. D. Thesis, unpublished, University of Wisconsin, 1933, 2.

3 Usilton, Lida J. and Parran, Thomas Jr., "The Extent of the Problem of Syphilis and Gonorrhea in the United States", American Journal of Syphilis, 14, 1930, 153.

the life of its victim in half, besides wrecking homes, blasting hopes, and producing diseased progeny.[3] How powerfully Ibsen has dealt with this latter problem in his moving drama, "Ghosts."

The effects of gonorrhea are not as vicious as those of syphilis but they are more widespread. Gonorrhea is responsible for from 55 to 60 percent of the blindness of the newborn and for three percent of the blindness of the total population. It is the origin of a considerable percentage of the pelvic infections from which women suffer and the cause of many cases of one-child sterility. It is a common cause of severe arthritis and even of endocarditis and resultant death. Gonorrheal volvovaginitis is a serious and prevalent disease among young girls.[4]

The extent and seriousness of venereal diseases were not realized until the mobilization of forces for the world war. The army reported that venereal disease exceeded all other causes of ineffectiveness. The problem was of such large proportions that General Pershing declared in an order issued on July 3, 1917 that "The authorities have provided every necessary means to protect the men from venereal disease. One who contracts

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4 Usilton and Parran.

the same is guilty of a serious offense under the 96th Article of War. He should be tried by court-martial for contracting venereal disease through neglect, thereby unfitting himself for active military duty against the enemy and will be severely punished."[5] The punishment consisted of stopping the offender's pay; a severe punishment, indeed. The accepted medicant for syphilis, salvarsan, or as it is most commonly known, "606", was, as we know, invented by the Germans. During the World War they would allow no exportation of it to the Allies, counting the unrestricted spread of syphilis among the enemy as their greatest single aid toward victory.[6] Even with the control of venereal diseases in the army since the beginning of the World War, in 1927 we find that the incidence was 49.7 per thousand of the total personnel of the army and 132.3 per thousand of the total navy personnel.

Venereal diseases, as a group, far outnumber all other reported infectious diseases with the exception of influenza in times of an epidemic. In 1930 Pelonze reported that "it is estimated that from 60 to 90 percent of all males in large cities have gonorrhea at some time during their lives; that 20 percent of all married men

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5 Gulick, Luther H., Morals and Morale (New York, 1919), 27.

6 Ibid., 33.

contract the disease at some time during their married lives and of these 45 percent infect their wives; that from 40 to 60 percent of all operations on the uterus and its adnexa are thus occasioned; that gonorrhea accounts for at least five percent of all blindness."[7] Usilton in 1935 estimated from reports received from 39,000 medical sources in charge of the health of one-fourth of the population of the United States that there were 493,000 individuals constantly under treatment for gonorrhea; that the incidence of fresh infections annually was eight per thousand (as compared to four per thousand for syphilis) which would mean an attack rate of one million cases of gonorrhea occurring in the United States each year.[8] The same authority in 1930 estimated that 679,000 cases of gonorrhea came under medical care the first three months of infection each year.

Of every one thousand males born, ninety-five will be infected with syphilis by the time they are twenty-five years of age as compared to sixty-two of every thousand females who will be infected at the same age.[9]

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7 "Report of the Committee for Survey of Research on the Gonococcus and Gonococcal Infections", American Journal of Syphilis, Gonorrhea and Venereal Disease, January 1936, 9.

8 Ibid.

9 Hange, Howard LeRoy, Social Aspects of Venereal Disease, M. D. Thesis, unpublished, University of Wisconsin, 1932.

There are 423,000 cases of syphilis each year which come under medical care the first three months of infection and 643,000 cases constantly under care. Of women infected with syphilis, of four pregnancies, less than two offspring are born living. Of women admitted to maternity hospitals, 6.9 percent have a plus Wassermann.

Venereal disease is even more prevalent among the negro population than among the white. The incidence of syphilis is 7 per thousand, and of gonorrhea 11 per thousand, as compared to 4 per thousand for syphilis and 8 per thousand for gonorrhea among the white population.[10] Eighteen percent of the negroes in urban districts show a plus Wassermann while in the southern states twenty-four percent of all negroes over one year of age have a plus Wassermann.

A striking factor about venereal disease patients to the welfare worker is that 31 percent of the cases occur among people too poor to pay their own treatment costs and this burden has to be borne by the taxpayers. Since syphilis is more expensive to treat and of longer duration than gonorrhea we find 40 percent of the cases of syphilis being treated at public expense as compared to 21 percent of the gonorrheal cases.[11] Estimating the public clinic costs to be $1.00 for each gonorrheal

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10 Usilton and Parran, 153.
11 Hange.

treatment and $2.00 for each treatment of syphilis, with the private treatment costs at $4.00 for gonorrhea and $8.00 for syphilis, there is $15,000,000 spent annually in medical care of ambulatory patients with venereal disease on the basis of eight treatments per case for gonorrhea and twenty-two treatments per case for syphilis. Venereal disease costs the government $1,000,000 per year for treatment in the Marine Hospital where it constitutes only 20 percent of the case load. Estimating the cost of institutional care at $2.50 per day for the 12,300 persons suffering from general paresis and syphilis of the central nervous system, the annual cost for these patients is $11,270,000.[10] Besides medical care we must take into account the economic loss occasioned by the time lost from work. Using the army and navy figures of 2.43 days per thousand for syphilis and 5.18 days per thousand for gonorrhea in estimating the total population, we find that 21,000,000 working days are lost per year which, at $4.00 per day, amounts to an annual loss of $84,000,000.00. This further means that, on the average, each male in the United States between the ages of 15 and 45 years loses one-half working day per year. The cost per capita to every citizen of the United States for the treatment of syphilis alone is 88 cents; the loss due to shortened life span is $1.20 per capita, while the loss due to deaths from

other forms of syphilis is more than $10,000 per capita.[12]

A study made by three doctors, two from Baltimore and one from New York, the findings of whom were reported May, 1936, is significantly illustrative of the fact that the burden for treatment of venereal disease is carried by the public. They found that 75 percent of the cases of syphilis in Baltimore are treated in public clinics; that 30 percent of St. Louis' syphilitics are treated in public clinics; that Detroit public clinics care for 40 percent of Detroit's syphilis cases while Cleveland cares for an even 50 percent of her syphilitics in the public clinics. They also found that of the hospital patients suffering from neurosyphilis, cardiovascular syphilis and miscellaneous types of syphilis whose total hospital bill was $75,236.93, only $3,529.35 was paid by the patients, leaving 64 percent of the cost to be borne by the taxpayers.[13]

After the figures just quoted it would seem that we are spending an enormous sum to treat venereal disease patients, which is true; however, it is small as compared to what we cheerfully spend on each case of

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12 Friedman, 8.

13 Thompson, W. O., Brumfield, W. A., Caldwell, Lucille", Direct Cost of Syphilis in a Representative American City", American Journal of Syphilis, May 1936, 243-615.

tuberculosis. The Public Health Departments of our land annually spend two and a half times as much for the control of tuberculosis as is spent for venereal disease, although the latter is four times as prevalent.[13] The campaign waged by doctors, public health officials, and interested laymen against tuberculosis has made the knowledge of the harmful effects of the disease universally known and has so publicized the symptoms of the disease and methods of treatment that their knowledge is virtually a part of the equipment of every high school student. This has been a most effective measure in its control and has done much to create public demand for the treatment of tuberculosis victims at public expense when private resources are not available. A similar campaign needs to be waged on behalf of venereal disease control. Although the disease has long been recognized and its harmful results known, its very nature provokes silence or secret discussion rather than open demand for adequate treatment and control facilities. Edward L. Keyes Jr. has aptly said, "If reticence so mutilates the race, let reticence retire. If the moralist is so little protection, let him stand aside. Here is business for the health officer."[14]

Venereal disease is hard to discover, and when

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14 Friedman. p. 1

discovered it is most difficult to see that the person receives adequate treatment to effect a cure. In the first place the patient is rarely sick enough to call a doctor. He is usually ambulatory and the neighbors are not aware of the disease from the appearance of the afflicted person. The most insidious factor is that the disease is easily concealed from members of the same household and is often spread to innocent members by contact, and sometimes by fomites. When a patient does seek medical aid, it is likely to be in a different city from his residence, and a false name and address are frequently given so that it is impossible to trace the patients and enforce continuation of treatment when the patient ceases treatments before he is in a "safe" condition. From a study of the problem of venereal disease in Massachusetts, Dr. Nelson estimates that 25 percent of the patients see out of town physicians.[15] Isolation and quarantine is not always provided for by the health laws of the state althought it is in Wisconsin.[16] If the physician fails to make adequate diagnosis or tell the patient of its presence, nobody knows that the disease exists. Of course treatment can not be made compulsory for those patients who

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15 Nelson, N. A., "The Control of Syphilis from the Health Officer's Viewpoint", American Journal of Public Health, February 1932, 165.

16 Appendix,

refuse to be discovered.

The first effort on the part of the United States government to control venereal disease was made as a result of the seriousness of the problem as revealed by the incidence among enlisted men and culminated in the passage of the Chamberlin-Kahn Act which became law on June 9, 1918. It provided for the creation of an interdepartmental Social Hygiene Board consisting of the Secretaries of War, of the Navy, and the Treasury as ex-officio members and of the Suregons General of War, Navy and Public Health Service, or representatives approved by the respective secretaries. The duties of the board were first, to recommend rules and regulations for the expenditure of money allotted the States in order to assist them in caring for civilians whose detention, isolation, quarantine, or commitment to institutions might be found necessary for the protection of military and naval forces of the United States against venereal diseases. To carry out the work, $1,000,000 was appropriated annually for the years 1919 and 1920. The second duty of the board was to select certain Universities to which allotments of money might be made for the purpose of discovering more effective medical measures in the prevention and treatment of venereal disease. Four hundred thousand dollars were appropriated

annually for two years to further this purpose.

Regulations governing allotment of funds for venereal disease control were made by the secretary of the treasury. He stipulated that each state must meet the federal appropriation by an equal state appropriation, and that no state should get federal money until it passed legislation requiring the local health authorities to report cases of venereal disease in accordance with the state requirements and the Public Health Service. He provided further that 10 percent of the money should be used for administration, 50 percent for treatment, 20 percent for educational measures and 20 percent for repressive measures. During 1918-19, 46 states adopted the required regulations. On October 2, 1918 Wisconsin received $25,375.70 from the government as its share of the federal money to be used in the control of venereal disease.

Although it was not until 1918 that the United States government made a concerted effort to promote venereal disease control, the causitive agent of syphilis had been known for 27 years and the Wassermann test had been available for an equal length of time. Adequate anti-syphilitic therapy in the nature of arsphenamines has been used for eighteen years.[17]

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17 Friedman, 1.

With the grant of 1918, Wisconsin was able to establish venereal disease clinics at strategic points throughout the state. Federal funds petered out after four years and the total costs had to be borne by the state and city. Some clinics were supported by state funds entirely and for others the city and the state shared the expense. The division of costs between the locality and state is illustrated in Madison, where the city furnishes the rooms, pays for the light, water, telephone and laundry for the clinic and the State pays the salaries of the doctor and nurse-social worker in charge of the records and who assists the doctor in treatment as well as following up delinquent cases, and locating new sources of infection. Clinics in Wisconsin are located in Beloit, Janesville, Kenosha, LaCrosse, Madison, Milwaukee, Oshkosh, Racine, Superior, and Wassau. The doctors in charge of the clinics are all specialists (or have specialized after taking up the work) and their helpers are registered nurses with some social work experience or training. The clinics accept for examination any patient who comes to them, but accept for treatment only those who can not afford private treatment. Patients in all stages of the disease are given curative treatment. The microscopic smears for gonorrhea taken at the clinic are tested at the State Laboratory of Hygiene and the Wassermann tests

are made by the State Psychiatric Institute. Patients are referred by the outdoor relief authorities, by the county clinics, the police matrons, the State Board of Health, the State Board of Control, by physicians, by transient homes, by other patients who have themselves been infected by a known source or know of an infected person who is likely to be a source of disease propagation in the community, and some patients come voluntarily for treatment. At the Madison clinic, 127 out of 503 cases in 1934 were voluntary patients, 77 new patients were referred by other patients taking treatment, and 62 persons were referred by the visiting nurses. In 1931 the Madison clinic treated 470 cases, in 1932 they treated 465 cases as compared to 503 cases in 1934.

In 1931 there were 671 clinics throughout the United States, 445 of which were receiving State aid. In England the venereal disease clinics are better developed than in the United States where the emphasis is on education rather than on treatment as it is in England. As a result of England's emphasis on treatment, the clinic attendance there has been increasing although the new cases of gonorrhea and syphilis have been decreasing. In 1917 England had 113 clinics with an attendance of 204,692, of whom over 25,000 were new cases.

In 1935 there were 193 clinics with an attendance numbering 1,719,148 persons of whom only 22,588 were new infections.[18] The effectiveness of prompt treatment of venereal diseases can be seen in the army experience where the rate of .0033 on 1/17/18 was reduced to .0030 on 1/31/18, to .0029 on 2/7/18 and to .0027 on 2/14/18.[19] Or looking at the army record over a longer period of time, the incidence of venereal disease was 179.32 per thousand in 1909, was reduced to 107.23 per thousand in 1916 and to 48 per thousand in 1928.[20] The establishment of clinics where disease can be diagnosed and treated free of charge or referred to some private physician for treatment if the patient can afford to pay, and the publicity given the matter by discussion of and legislation for the eugenics marriage laws has had a wholesome effect on the reduction of the death rate from syphilis, tabes dorsalis, and paresis 27 percent from 1900 to 1925.[21] New cases of syphilis are also thought to be declining perhaps as a combined result of prophylactic instruction given in the army and navy and the spread of such knowledge among men of the general public.

One deterrant factor in the proper care of dis-

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18 Friedman, 10.
19 Gulick, 27.
20 Friedman, 12.
21 Ibid., 7.

eased persons is the dearth of physicians, especially specialists, to treat the existing number of patients. In a survey made in 25 communities in all parts of the country covering a total population of 24,498,000 from May 1926 to February 1929, in which 30,746 physicians were solicited, 41.8 percent of them reported one or more cases. Each physician averaged four venereally diseased patients on the day of questioning. Highman, setting the individual capacity of each physician to be the care of fifty syphilitic patients per day, suggested the probability that there were hardly enough physicians in the country, and certainly not enough specialists, to care for the estimated 5,000,000 luetics and the annual increment of 423,000 cases.[22]

Because the incidence of venereal diseases, gonorrhea, syphilis, and chancre, is at its peak among persons from twenty to twenty-four years of age, and because by far the greatest majority of infections occur through sexual intercourse, although a few cases are innocently contract by touch and by the handling of infected garments or other articles, it is very important that persons who plan to marry should be required to present a certificate of freedom from venereal disease. A man who, having a venereal disease in a communicable form, marries is not only in danger of infecting

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22 Friedman, 7.

his wife but also of infecting his unborn children so that they may, from the moment of their birth, be afflicted with congenital syphilis and its attendant physical handicaps, or by congenital gonorrhea and attendant blindness. Besides being a mutilator of innocent children, the 1933-34 report of the Wisconsin Bureau of Vital Statistics states that "Most prominent among known causes of stillbirths are the complications of labor, syphilis, and toxemias of pregnancy."[23]

This does not mean that the venereal diseases are an insurmountable obstacle or permanent barrier to marriage. To quote Alfred Fournier, "The truth is, that, save very rare exceptions, syphilis constitutes only a temporary interdiction to marriage, and that a syphilitic subject may, after a certain stage of sufficient depuration, return to a state of health which fully restores his fitness for the double role of husband and father."[24] And it is generally known that gonorrhea and chancre are more easily treated and cured than syphilis.

Let us glance briefly at the history of laws regulating the marriage of the venereally diseased in the

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23 Report of the Wisconsin Bureau of Vital Statistics, 1933-34 (Madison, 1934), 181.

24 Fournier, Alfred, Syphilis and Marriage, Lectures Delivered at the St. Louis Hospital, Paris (D. Appleton and Co., New York, 1881), 13.

United States. Washington passed the first eugenics marriage law in 1909 but it was repealed after only a few months of operation. With this exception, Wisconsin was the first state to pass a eugenics marriage law and that became effective on January 1, 1913. The law was originated by Mrs. Gustave A. Hipke, then acting president of the Maternity Hospital and Dispensary Association of Milwaukee and was introduced by Senator William L. Richards. The bill as originally drawn applied to both men and women but was limited by the Senate to men only. The 1913 bill provided that men applicants for a marriage license be examined by a licensed physician "of good moral character and of scientific attainments and at least thirty years of age," that no marriage license be issued unless the applicant was found to be free from acquired venereal disease, that a maximum fee of $3.00 be charged, and that the county physician examine indigents free of charge. The applicant's physical condition was to be determined by "physical examination and by the application of the recognized clinical and laboratory tests of scientific search." Any physician who made false statement in the certificate was to be punished for perjury and have his State license revoked, while the clerk unlawfully issuing a license to marry was to be imprisoned in the state prison not less

than one year or more than five years.[25]

The bill, from its inception, had incurred the hostility of the medical profession because they had not been consulted about it. Their chief criticisms were that the law was ineffective because it provided for the examination of men only, and that the fee did not adequately cover the expensive laboratory examinations specified by law. Other criticisms of the law were that it was devised for the personal profit of private physicians and that it interfered with natural freedom of the individual.

The eugenics marriage law was contested in two court cases. A test case came to court nine days before the law became effective, on December 22, 1913, on the grounds that the tests prescribed included a Wassermann which was impossible for all examining physicians to make. The Attorney General said, in delivering his opinion on the decision: "I am of the opinion that the law must be given a practical and workable construction, rather than one that will defeat its purpose...'recognized clinical and laboratory tests of scientific search' do not include Wassermann, nor such tests as can be made only by specialists, nor such as require special and expensive equipment or long continued laboratory experiments."

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25 Appendix, 82

The law was only in effect 20 days when it was taken to court again on the grounds of being unconstitutional when three different physicians refused to examine a man for the prescribed $3.00 fee and the clerk refused to grant him a marriage licensewithout a medical certificate.[26] The trial court upheld the charge on the grounds that (1) it was an unreasonable restriction upon the inalienable right of marriage; (2) it impaired the inherent right to enjoy life, liberty, and the pursuit of happiness; (3) that it interfered with religious freedom. On June 17, 1914, the case reached the supreme court and the decision was reversed by a 3-2 majority. The supreme court contended that the law did not intend to prescribe tests which the majority of licensed physicians in the state were not able to make and that "recognized tests" meant "tests recognized and used by the people who were to make them." The dissenting opinion of the Supreme Court sums up the arguments of the opposition to the act. "The act unduly casts suspicion of immorality and criminality of the most serious nature upon every male candidate, present, present, prospective, or possible, for the marriage state. It imposes such an oppressive burden on all such candidates as to proving competency to enjoy the natural right of marriage, or so takes such

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26 Patterson v. Widule, 157 Wisconsin 641.

right away without justification in many cases and restrains its exercise generally, as to efficiently discourage an institution which is absolutely essential to public welfare and so recognized and protected by fundamental law. By so oppressively interfering with the constitutional right of marriage as to partially or wholly destroy that right, the tendency will inevitably be to promote immorality and social and racial retrogression..."[27] One gets the impression from the two justices that great injustices are done daily when, in reality, the law only conforms in principle with other quarantine laws which are universally accepted. Redress is provided in that a person who has been denied a medical certificate can appeal to the county judge. A private hearing is held and if the person, from the evidence presented, is found to be eligible for marriage under the eugenics marriage law, the judge writes such an order to the marriage clerk.

The protesting medical profession proposed changes in the bill and the State Medical Society drew up a revised law whose provisions included the examination of women as well as men and applied to persons suffering from tuberculosis as well as venereal diseases; provided that tests could be made by "any properly qualified laboratory specialist or by the State Laboratory of Hygiene";

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27 Hall, Fred S., Medical Certification for Marriage (New York, 1925), 18.

raised the fee to a $5.00 maximum; and defined the means of testing as "by the application of the usual and ordinary tests and methods of examination" to determine if the person were "free from active pulmonary tuberculosis and communicable venereal disease." The result was that the bill was never introduced but the provisions for laboratory tests at the discretion of the examining physician, and free service in making the Wassermann tests by the state psychiatric institute at Mendota were incorporated in the revised law adopted in 1915.

Other new provisions in the 1915 law were the reduction of the fee from $3.00 to $2.00, the limitation of the physician's qualifications to licensing within the state, and the reduction of penalties for those who violated the law. Little advantage has been taken of the free Wassermann service by the state according to Dr. Lorenz, head of the Psychiatric Institute, who reports that only five percent of the physicians of the state make use of the laboratory for marriage examinations as compared to 65 percent who use the service extensively for other purposes.[28] We conclude that the physicians aren't making these prenuptial examinations as thorough as they should be to be the protection they were intended.

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28 Hall, 38.

Oregon was the next state to enact a eugenics marriage law and followed a few months after Wisconsin in 1913. The Oregon law provided that all males applying for a marriage license should have a physical examination by a licensed physician within ten days of the date of application for the license to ascertain that the applicant is free from contagious or infectious venereal disease. Provision for the examination of indigents by county physicians without charge, fixation of the maximum fee for other examinations at $2.50, and punishment of the physician who "knowingly and wilfully makes any false statement in any certificate issued" by revoking of his license to practise within the state, were included.[29]

North Dakota enacted a eugenics marriage law later in the same year. A physical examination was required of both the man and the woman for determination of freedom from pulmonary tuberculosis and an examination to establish mental health but in addition the man must present an affidavit showing that he is not afflicted with any contagious venereal disease. Anyone knowingly swearing falsely to any statements in the affidavit is to be punished for perjury as provided by the laws of the state.[30]

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29 Appendix, 81.
30 Appendix, 80.

Alabama followed in 1919 with a law patterned after that of Wisconsin. It profited from the disputes in Wisconsin about the size of the fee and placed the maximum at $5.00. Alabama profited again from Wisconsin's difficulty about required laboratory tests and inserted the same provision as is found in Wisconsin's 1915 law for "recognized clinical and laboratory tests of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary." Provisions for punishment of violations on the part of the license issuer and the physician are included.[31]

North Carolina and Wyoming both enacted eugenics marriage laws in 1921. The North Carolina law included necessary certification of nonexistence of tuberculosis in the infectious stage and a statement of the mental health for both male and female with certification of necessary freedom from venereal disease on the part of the prospective husband. No set fee was stipulated and provision for examination of indigents by the county health officer was made. Punishments for those unlawfully issuing a marriage license or anyone knowingly making false statements were provided.[32]

Wyoming's law is the briefest of any and provides

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31 Appendix, 74.
32 Appendix, 78.

only that "every male person securing a marriage license must produce a certificate dated within ten days before the date of the application for such marriage license from a licensed physician practicing in the State of Wyoming showing applicant to be free from any venereal disease in a communicable form."[33]

Louisiana was the seventh and last state to pass such a law, which was done in 1924.[34] It is patterned closely on the 1915 Wisconsin law providing for the same time limit for the physical examination, the same fee, the same provision for laboratory examinations, and the same punishment for violators of the act.

Criticisms of the eugenics marriage laws can be summed up as follows:

1. Women are not examined and the effectiveness of the act is greatly impaired. It is interesting to note that it is the men who oppose prenuptial medical examinations for women. The Wisconsin law of 1913 included, in its original draft, examination for women as well as men but the provision was removed in the Senate. The State of Oregon has tried to insert such a provision in its law on five different occasions only to have the measure defeated by the male members of the legislature.

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33 Appendix, 90.
34 Appendix, 76.

Men especially oppose the examination for gonorrhea for women because a general physical examination is necessary and they feel that to be embarrassing to to the prospective bride.

It is a scientific fact that venereal diseases are much less prevalent among unmarried women than among unmarried men. A typical study quoted by Fred S. Hall follows:

	Unmarried white males	Unmarried white females[35]
Gonorrhea	2,986	487
Syphilis	1,367	381
Chancre	238	12

2. Examinations fail to give protection to women. Some physicians argue that more training is necessary to enable physicians to detect venereal diseases in all stages. And even if the disease is in a detectable stage, a hurried examination or a crooked physician will pass the applicant.

3. False assurance of safety is given. A person who is in doubt about his condition and who is certified as "safe" may cease using protective measures and infect his bride. The bride will be entirely unaware of the existence of the disease.

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35 Hall, 51.

4. Public examiners or other specially designated examiners should be required. If specialists who were responsible to the State were provided to handle the venereal examinations, the public would be protected against incompetent and dishonest physicians.

5. The law is evaded through marriages out of the state. In the first place the marriage evasion act does not cover the eugenics marriage law provision in all states. On this general point, the 1933-34 report of the Wisconsin Bureau of Vital Statistics is quoted, "The charge has been made that our marriage rate, particularly in border counties, is low on account of the large number of couples who are married in adjoining states to avoid the eugenics examination required in Wisconsin. It is possible that some marriages of Wisconsin citizens do occur in other states to avoid the eugenics examination of males before marriage but the waiting period after the application for a license has been filed and more especially the posting of the notice to marry in the County Clerk's office, are the chief objections to the Wisconsin law."[36] A survey made by Mr. Fred Hall of Wisconsin citizens who were

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36 Report of the Wisconsin Bureau of Vital Statistics, 1933-34, 207.

married in Lake County, Illinois revealed that 23 percent of them brought medical certificates with them, and he concluded that it was the desire to avoid publicity and to hurry the marriage that motivated the out-of-state ceremony. Vancouver, Washington gets a large proportion of the Oregon marriages. Again it is hard to estimate how many of them are trying to evade the examination and how many wish a hurried ceremony in contrast with the three day waiting period imposed by Oregon.

7. Inadequate medical fee for thorough examination. Only two states, Wyoming and North Carolina, have no set fee. Alabama had few complaints with a maximum fee of $5.00. But the laws in North Dakota, Louisiana, and Wisconsin with their fee of $2.00 and Oregon with its fee of $2.50 receive much criticism. In a survey[36a] of 155 Wisconsin physicians it was found that only 14 of them said that the fee was adequate to compensate for time and energy required if a good job were to be done. Many physicians do charge more than is stipulated by law, justifying themselves by giving a thorough examination and charging accordingly. Sixteen physicians charged $3.00, three physicians charged $5.00, one charged

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36a Hall, 50.

$7.00, two charged $8.00, and one charged $10.00 regularly.

8. A criticism met in Wisconsin, Louisiana, North Carolina and Alabama is that marriage of men is forbidden even when their disease is not in a communicable form. The defense made by the friends of such a provision is that a man afflicted with a venereal disease, especially syphilis, will have his health so impaired, especially in later years, that it is a protection to his would-be wife and society to forbid marriage.

9. Laboratory tests should be required in every case. In many cases of syphilis or gonorrhea a person who has a little scientific knowledge and a wish to deceive can so "fix" himself that the diseases are not detectable by observation, but will show up in laboratory tests. The conscientious physician usually does require a Wassermann and microscopic tests whenever exposure is admitted.

10. Failure of the law to provide for state supervision of examination to given marriage candidates. At the present time each doctor uses his own judgment as to type of examination he gives. It has been suggested that the state office of Health make a definite schedule of questions and tests to be given each candidate.

Certainly some improvements can be made in the laws. Fred S. Hall suggests the following proposed changes for the Wisconsin law which can be adapted to the other state laws as well:

1. Those states which now deny marriage licenses to men who have a venereal disease in a non-communicable form should modify their laws to permit marriages in such instances.

2. A certified state form of examination procedure be drawn up and followed, including a complete history of each case and laboratory tests if history of exposure is indicated.

3. Raising of the maximum fee for examination (medical) to $5.00 in North Dakota, Wisconsin, Louisiana, and Oregon so that the physician, being better paid, will have greater incentive to make a more complete examination including complete histories in each case and a Wassermann when he thinks it advisable.

4. That the State Board of Health be given general supervisory powers with reference to the law.

5. That reporting and quarantine follow when the disease is found on examination for a marriage license.

Fourteen states have laws which aim to prevent venereally infected persons from marrying without requiring

all marriage license candidates to present medical certificates. These laws are of three types: (1) laws forbidding marriage of venereally diseased persons as in Delaware, Indiana, Michigan, New Hampshire, New Jersey, Vermont, and Virginia; (2) laws requiring the marriage license candidates, sometimes both and in Washington just the man, to take an oath that they are not diseased as in Nebraska, Pennsylvania, New York and Washington; and (3) laws requiring candidates who have been infected to present a certificate showing freedom from disease. Wisconsin, Kentucky and Oklahoma have this type of law. Chart No. 1 shows these provisions and others.

The general educational value attendant on the discussion of, and legislation for, eugenics marriage laws has been of real value. It has helped invest with objectivity and scientific importance a subject which has been considered, by many, to be unmentionable. It has helped people to realize the seriousness of the problem and has been a deterrant influence for those who plan on marrying. Men who plan to marry in the future are prompted to be examined previously in order to ascertain their condition and take treatment if it is necessary. In those states which have marriage laws it is not unusual to have persons come from other states for such an examination, especially if they are in doubt about their condition and wish to safeguard their future mates.

But we must recognize that the eugenics marriage laws have their greatest value as an educational measure for the law can be evaded if one is persistent and artful enough, but with the proper education in the matter, people can be made to see the importance of conforming for their own sakes. Dr. A. C. Harper, State Health officer of Wisconsin, has estimated that the publicity accorded the eugenics marriage law in Wisconsin when it was proposed and adopted by the legislature was worth more than a $100,000 grant to that state for publicity.

Besides the improvements suggested for the present laws, and the extension of similar laws into other states, another needed change is the professionalization of marriage license issuers. Richmond and Hall declare that "Probably the greatest single advance of all in the marriage license system of today will be made when every state has provided for detailed state supervision of all marriage license issuers and has developed among them an esprit de corps and a professional interest in their task that is now found only among a minority of issuers."[37] Many clerks are ignorant of the provisions now enacted for the prevention of the marriage of venereally diseased as is strikingly illustrated when three out of the five license issuers questioned in Wisconsin did not know

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37 Richmond and Hall, Marriage and the State, 46.

that the law of their state provided that a woman who has had a venereal disease must file a certificate indicating that she is free from infection before she can be granted a marriage license. The enforcement of such a provision, as is true of the similar laws in other states, would mean that the clerk must know which persons have been diseased, a matter which would involve such unwelcome publicity that it would tend to discourage the diseased from seeking treatment in order to keep their condition a secret.

In review, the best solution to the control of the infection of the innocent party, whether man or woman, in the marriage relation and subsequent protection to their progeny seems to be the extension of the eugenics marriage law in every state; the requirement of examinations for women as well as men; a certified state form of examination procedure to be drawn up by State Health authorities and followed by medical examiners which includes a complete history of each individual and laboratory tests if the history indicates exposure; raising of the maximum fee for examination to $5.00 in those states which now have a lower rate; general supervisory power of the State Board of Health with reference to the law; and enforced, if voluntary treatment of the disease does not ensue, treatment of disease when it is found upon examination for a marriage license.

DATES EUGENICS MARRIAGE LAWS PASSED

Wisconsin	1913
Oregon	1913
North Dakota	1913
Alabama	1919
Wyoming	1921
North Carolina	1921
Louisiana	1924

FEES FOR PHYSICAL EXAMINATION FOR FREEDOM FROM VENEREAL DISEASE AS PREREQUISITE FOR MARRIAGE LICENSE

State	Fee
North Dakota	$2.00
Wisconsin	$2.00
Louisiana	$2.00
Oregon	$2.50
Alabama	$5.00
North Carolina	No set fee

DESIGNATED TIME OF PHYSICAL EXAMINATION

North Dakota.....at time of application, no specified time limit

North Carolina...within 7 days prior to marriage

Oregon.....within 10 days prior to marriage

Wyoming.....within 10 days prior to marriage

Alabama.....within 15 days prior to marriage

Louisiana.....within 15 days prior to marriage

Wisconsin.....within 15 days prior to marriage

VENEREAL DISEASE AS CAUSE FOR DISSOLUTION OF MARRIAGE BONDS*

A. By Statute

1. Illinois

Infection of the other spouse with a communicable venereal disease is grounds for divorce.

2. Kentucky

a. Concealment of any loathsome disease existing at time of marriage is grounds for divorce.

b. Contracting any loathsome disease after marriage is grounds for divorce.

B. By Court Decision

1. Kentucky

a. Subsequent cohabitation is not condonation such as to stop an innocent spouse in an action against one afflicted with a loathsome disease.

Hooe v. Hooe, 122 K. 590 (1906)

Muir v. Muir, 133 K. 125 (1909)

b. Venereal disease, not known to exist at time of promise of marriage, is a defense to an action for breach of promise.

Shackleford v. Hamilton, 93 K. 80 (1892)

Gardner v. Arnett, 21 Ky. L. Rep'r. 1 (1899)

* Compiled from United States Statutes by author

2. Massachusetts

A marriage may be avoided for the affliction of one party, unbeknownst to the other, with practically incurable syphilis, at least if the marriage is unconsummated and the disease is transmissible as well as contagious.

Smith v. Smith, 171 M. 404 (1889)

Vondal v. Vondal, 175 M. 383 (1900)

3. Montana

A woman remains a man's wife and is entitled to temporary alimony and counsel fees until he proves her fraud in inducing the marriage when seriously infected with syphilis.

State ex rel. Wooten v. District Court, 57 M. 517 (1920)

4. New Jersey

Though fraud concerning freedom from disease generally, even if transmissible does not go to the essence of marriage, misrepresentation or fraudulent concealment of certain diseases existing at the time of marriage, which make matrimonial functions impossible, such as syphilis, allows of annulment.

Kaufman v. Kaufman, 86 E. 132 (1916)

Crane v. Crane, 62 E. 21 (1901)

5. New York

a. Health

Where either party is in such a physical condition that the discharge of matrimonial functions will afflict the other with a loathsome disease, he is not fit to meet marital obligations, and actions may be maintained for annulment in cases of a contagious venereal disease.

Anonymous, 34 M. 109 (1901)

b. Fraud allowing of annulment

Though general bodily health is not an essential of the marriage relation and fraudulant concealment of a swollen tongue or inflammation of the bladder is no ground for annulment, failure to disclose an affliction detrimental to the marriage relation, such as a vaginal or venereal disease, at least if chronic and communicable, constitutes fraud warranting annulment.

Anonymous, 21 M. 765 (1897)

Svenson v. Svenson, 178 N. Y. 54 (1904)

Meyer v. Meyer, 49 How. Pr. 311 (1875)

Jacobson v. Jacobson, 207 A. D. 238 (1923)

6. Pennsylvania

   a. Fraud allowing of divorce

      The fraud allowing of divorce must be such as to deceive a man of ordinary prudence and must concern some matter in regard to the marriage relation itself. There is adequate fraud in the concealment of venereal disease.

      Dunbar v. Dunbar, 68 P. L. J. 68 (1917)

7. Vermont

   a. Physical incapacity allowing of annulment

      A malady, such as syphilis, which renders a person incapable of propagating healthy children and makes sexual relations impossible without great danger of communicating the disease, is a physical incapacity warranting annulment.

      Ryder v. Ryder, 66 V. 158 (1892)

   b. Fraud warranting annulment

      A marriage may be annuled, regardless of cohabitation, for fraud in willful concealment of chronic and incurable syphilis at time of marriage.

      Ryder v. Ryder, 66 V. 158 (1892)

8. Wisconsin

a. Fraud allowing of annulment

Concealment of a loathsome venereal disease that seriously and physically affects the innocent spouse is fraud allowing of annulment.

C-- v. C-- 158 Wis. 301 (1914)

CHAPTER V

STATE LAWS REGULATING INTERMARRIAGE BETWEEN RACES- SO-CALLED MISCEGENOUS MARRIAGE LAWS

We learn in our study of Social Psychology that there is a disturbing sense of difference between persons of different skin colors which is not felt between those of differing religious faiths, of widely different vocational or professional interests, or even between those who speak different languages. We freely intermarry with native Scots, Swedes, Norwegians, Danes, Germans and French and marital alliances between ourselves and foreign born Italians and natives of India are not uncommon; yet we find thirty of our forty-eight states refusing their white citizens the right to marry a negro, or one who has one-eighth negro blood. The Texas statute expands the term 'negro' to include a "person of mixed blood descended from negro ancestry from the third generation inclusive, though one ancestor of each generation may have been a white person."

As is common knowledge, social standards and bases of racial prejudice arise, if not originate, with economic competition of some 'foreign' race with ourselves, or, an equally common source, our desire to exploit another people. We work out convincing rationalizations

to convince ourselves that our attitude of antagonism and our inconsiderate treatment of other races is justified and all in the line of duty.

Nations used to tell themselves that they were innately superior to their heathen victims because of their possession of Christianity and were only fulfilling their Christian mission of carrying the gospel abroad. To be naked was un-Christian, so they sold their converts garments manufactured by the missionary country, probably by sweat shop labour.

In this age of emphasis on science and education, we have found another plausible excuse; our biological superiority. We point to the negro's low brow and wide nostrils as evidences of his primitive state of evolution and tell ourselves that he is little more than a brute. He might well shame us with our thin anthapoidal lips and undesirable straight hair.

Those states on the west and southern coasts which have found that they can no longer keep the Mongolians and Mexicans in a state of exploitation and subjugation, have legislated against their intermarriage with whites. In spite of the ancient history of oriental culture, we term the Mongolians uncivilized because they have not developed the practical gadgets of our western world. We look with distaste upon their slant eye, ignorant of the

fact that it is a higher biological evolvement than our prized straight one.

But returning to our own United States, it is interesting to note that the middle group of states which are away from the west, south, and southeast coasts, the former dumping spot for those engaged in the African slave trade and the recent entry portal of the Mongolian, do not have laws regulating racial intermarriage. Thus in Connecticut, Washington, D. C., Illinois, Iowa, Kansas, Maine, Minnesota, New Hampshire, New Jersey, New Mexico, Ohio, Rhode Island, Pennsylvania, Vermont, Washington and Wisconsin intermarriages of the races is legally permitted, although it may be frowned upon by the enthusiasts for racial purity. Surprisingly enough, perhaps, miscegenous marriages are freely permitted in New York. This may be explained by the fact that until the recent influx of South Europeans, New York's immigrants were predominantly 'desirables.' Those who may not be considered so by economic standards, the Jews, refuse to marry outside of their own race, so marriage legislation directed against them would be paradoxical.

The oldest inter-racial marriage legislation was passed in the southern states after the civil war liberated the slaves. Unable to manage such large plantations without slave labor, the South began to be industrialized, with the result that the negro and white populations were

brought into competition for the same jobs. A bitter gesture, aimed to 'keep the negro in his place' and supported by biological and moral theorizing, was the passage of the miscegenous marriage laws. Daniel G. Brinton wrote in 1880, "A white man entails indelible degradation on his descendants who takes in marriage a woman of a darker race." He continued, "That philanthropy is false, that religion is rotten, which would sanction a white woman enduring the embrace of a colored man."[1]

The biologists' help was enlisted in supporting the contention that the mixture of races resulted in a product inferior to either race, injuring and destroying the fine qualities of both races. C. B. Davenport came out with the comforting statement that negro-white and Filapine-European crosses seem socially inferior to parent races. The ministers of the gospel looked to the Bible for infallible proof that the black race was unholy and meant to serve which they found in the story of Lot's wife.

Literature of the present day, written from a more unbiased, and, let us hope, a more scientific study, holds forth a different view. E. A. Hooton writes that "When the dregs of two races unite, one can scarcely expect their progeny to tread the heights of human endeavor.

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1 Guirard, A., "The Last Taboo", Scribner's Magazine, 77, June, 1925, 588.

But when sound representatives, even of diverse races, intermarry, they are likely to have a vigorous and abundant issue whose cultural achievements will be commensurate with the mean of their inherited abilities, individual and racial, and with the possibilities of their physical and social environment."[2] Dr. Boas, professor of anthropology at Columbia University, writes in an even more encouraging vein, "functions of the body, physiological as well as mental, are determined to a much greater extent by environment than is the case with the anatomical form of the body. The wide range of variety in mental reaction, which is found in every single individual, makes it plausible that with a change of geographical and social environment a thorough modification of function, particularly of mental functioning will occur."[3]

E. F. Frazier, in a study of children in black and mulatto families, found that the mulattoes were superior, from a physical standpoint, than the negroes. The mulattoes had a higher birthrate than the negro families, and lost, on the average, fewer children. There were about the same number of families which had no children,[4] which is contrary to the belief that racial intermarriage results in sterility.

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2 Hooton, E. A., "When Races Intermarry", Nation, 127, July 25, 1928, 85.
3 Boas, F., "Fallacies of Racial Inferiority", Current History, 25, February, 1927, 681.
4 Frazier, E. F., "Children in Black and Mulatto Families", American Journal of Sociology, 39, July, 1933, 28.

Too many times the mental and other achievement tests by which we judge the comparative intelligence of our own culture that we would naturally rank over a newcomer to our land. Dr. Ralph Linton has often asked his classes how we Americans would rank if we took a Chinese intelligence test, writing with their soft brush, in their characters, and about their culture. Professor Brigham found that Italian immigrants who came here twenty years ago tested higher mentally than those who came recently.

One of the editorial writers of the Journal of the American Medical Association tells of a survey taken at the University of Illinois in which the only students of pure race were the Nordic and that they rated distinctly inferior in mental achievement. [5]

Because of the present day means of fast and inexpensive travel, racial intermingling is more commonplace, and as we learn more about the oft times superior culture, history, and habits of those of differing skin colors, and as long as they are not an immediate threat to our economic security, we lose the first felt repellent shock of their differences (skin color, texture and odor).

Many persons have come to feel that intermarriage

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5 "No 'Racial Purity' Here", Literary Digest, 97, May 1927, 20.

between members of the white and colored races, if the persons are of good biological quality, would not be ill-advised if it were not for the remaining psychological tensions and great adjustments necessary between representatives of differing cultures and in the face of an unsympathetic world. G. E. Sololsky, a Jew who married a Chinese wife, feels that "A mixed marriage is, then, first of all, only a marriage. The elements which make for success or failure are primarily those which determine the fate of other unions."[6] He points to the successful couples, Princess Der Ling and her husband T. C. White, and Dr. Hawks Pott of St. John's University in Shanghai and his Chinese wife. Pardee Lowe, an American Chinese student who married an American girl, holds the same view.[7]

To those persons who fear that, although a marriage partner may have comparatively little colored blood, there is always the danger of a throwback, Dr. M. J. Herskavits reassuringly insists that such danger is negligible. He concludes that racial inter-marriage, as such, is not a basis for either improving or degenerating the race. The consideration of greatest importance is that the marriage partners be of good biological quality and ancestry.[8]

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6 Sokolosky, "My Mixed Marriage", Atlantic Monthly, 152, August 1933, 139.
7 Lowe, "Mixed Marriage", Asia, January 1937.
8 Herskovits, M. J. M., "Race Crossing and Human Heredity", Scientific Monthly, December 1934.

As we would suspect, where the negro and mulatto population is the greatest, the interracial marriage laws are most stringent. Mississippi, half of whose population is mulatto,[9] besides prohibiting their intermarriage with whites, further legislates against any "person, firm or corporation who shall be guilty of printing, publishing or circulating printed, typewritten or written matter urging or presenting for public acceptance or general information, arguments or suggestions in favor of social equality or intermarriage between whites and negroes" under penalty of "a fine not exceeding five hundred dollars or imprisonment not exceeding six months, or both fine and imprisonment." South Carolina, whose mulatto population equals that of Mississippi, imposes one of the heaviest fines, "Not less than five hundred dollars," on parties of the interracial marriage as well as upon those who might solemnize such marriage, adding imprisonment "for not less than twelve months, or both, on the discretion of the court" for good measure.

The states of Louisiana, Georgia, and Alabama rank next in proportion of mulatto population, having at least thirty-seven and one-half and up to near fifty percent. We should suspect this from a look at Alabama's law imposing a penitentiary sentence of "not less than two nor

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9 "Shall We All Be Mulattoes?" Scientific Monthly, 39, December 1934, 23.

more than seven years." on white and negro couples, married or unmarried. Georgia is not so harsh, limiting imprisonment of miscegenously mated couples to "not less than one year and not more than two years." Louisiana only calls for "fine or imprisonment, or both, at the discretion of the court." Georgia's law has one feature unique among the states, the provision that "When any birth certificate, showing the birth of a legitimate child to parents one of whom is white and one of whom is colored, shall be forwarded to the Bureau of Vital Statistics, it shall be the duty of the State Board of Health to report the same to the Attorney General of the State, with full information concerning the same. Thereupon it shall be the duty of the Attorney General to institute criminal proceedings against the parents of such child for any violation of the provisions of this chapter which may have been committed."

Virginia, North Carolina, Arkansas and Florida claim from one-fourth to thirty-seven and one-half percent of their population as mulatto. Florida is one of three states to declare the children of these mixed marriages illegitimate, adding that they are "incapable of having or receiving any estate, real, personal or mixed by inheritance." Virginia punishes the parties guilty of an interracial marriage by confinement in the penitentiary "not less than two nor more than five years." North

Carolina's term of imprisonment is more elastic, "for not less than four months nor more than ten years," but adds a fine "in the discretion of the court." Florida and Arkansas demand that the issuer of the license be punished by a fine of "one thousand dollars", and "not less than two hundred dollars nor more than five hundred." Florida, Arkansas and Virginia impose fines on the solemnizer of such marriages, ranging "from one hundred to five hundred" in Arkansas to one thousand in Florida. Virginia "lets money talk" in helping round up violators of the law by giving one-half of the two hundred dollar fine imposed on the unfortunate solemnizer to the informer.

Texas, Tennessee, California, Arizona, New Mexico, Colorado, Nebraska and Kansas find that their mulatto population is from one-eighth to one-fourth of their total. Of these, Kansas and New Mexico have no laws regulating intermarriage of the races, and California and Arizona don't even provide that the parties to the marriage, the license issuer, or solemnizer of the marriage have committed a misdemeanor and could be punished on those grounds. On the other hand, Nebraska makes the issue of these prohibited marriages illegitimate, Tennessee provides a fine of from one hundred to five hundred dollars for the knowing issuer of the license and the solemnizer of a miscegenous marriage ceremony and imprisonment

of from two to five years for the guilty parties; Colorado fines the license issuer one hundred dollars, fines the marriage solemnizer fifty to five hundred dollars with an optional prison sentence of "not less than three months nor more than two years," and punishes the parties guilty of the marriage in like manner.

Oklahoma, Missouri, Kentucky and West Virginia number from five to twelve and one-half percent of their population as mulatto. Here we find the greatest variation in penalties. Missouri's law states that the issuer of the license and solemnizer of such marriage has committed a misdemeanor while Kentucky pronounces the children of such marriages illegitimate, provides a fine of "not less than five hundred dollars nor more than five thousand dollars" for the issuer of the license and parties to the marriage and demands that the knowing solemnizer of such a marriage be fined in any sum to one thousand dollars or imprisoned not less than one month nor more than twelve months, or both. In Oklahoma the solemnizer of the marriage and the parties of it are fined in any sum to five hundred dollars and imprisoned "not less than one nor more than five years" in the penitentiary while the issuer of the license receives a fine of from one to five hundred dollars and may be imprisoned in the county jail not less than thirty days nor more than one year if the court so orders. West Virginia's

statutes say that the parties to the marriage have committed a misdemeanor and "upon conviction thereof, shall be confined in jail not more than one year."; that the "person who shall knowingly perform the ceremony of marriage between a white person and a negro shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined, not exceeding two hundred dollars," and that the "clerk of the county court (who) shall knowingly issue a marriage license contrary to the law, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding five hundred dollars, or confined in jail not more than one year, or both, at the discretion of the court."

Besides the states above listed, Idaho, Indiana, Maryland, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah and Wyoming have legislated against the intermarriage of whites and negroes. Exact provisions of their laws may be found in the accompanying chart.

Oregon, Arizona, Nevada and South Carolina won't permit marriage between whites and Indians; intermarriage between whites and Chinese is prohibited by Montana, Nebraska and Oregon; between whites and Japanese by Montana and Nebraska; between Malays and Caucasians by California, Nevada, South Dakota and Wyoming; between whites and Mongolians in Arizona, California, Idaho, Missouri, Mississippi, Nevada, South Dakota, Utah and Wyoming;

between whites and Mestizos in South Carolina; between whites and Kanakas, or Hawaiians, in Oregon; and between Caucasians and Coreans in South Dakota.

In spite of the laws against racial intermarriage in the United States, one fifth of the negro population of the United States are mulattoes. A large proportion of those who fill these ranks are the product of illicit relationships between white men and negro women. The percentage of mulattoes is higher in the north and western states than in the southern,[10] due, most likely, to the less stringent interracial marriage laws. There are a higher proportion of those of bi-racial extraction in the urban centers and in the rural districts. The mulattoes, rather than the pure blooded Africans, have stood out among the blacks in this country. Among those who have achieved outstanding success are numbered Ira Aldridge, the actor; Charles N. Chestnutt, the novelist; Henry O. Tanner, the artist; Booker T. Washington, educator; and Bert Williams, comedian. Six states have had negro lieutenants, all mulattoes. Fifteen-sixteenths of the negro physicians are mulattoes. Too often we have misjudged the American negroes by comparing them with ourselves, who are the product of a superior culture, and

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10 Reuter, E. B., "The American Mulatto", Annals of the American Academy, 40, November, 1928, 36-43.

mistaking white achievements, therefore as due to a superior endowment.

The problem of miscegenation will always remain with us as long as we hold ourselves, as a race, to be falsely superior to all colored races as such. Prohibition of all racial intermarriage has been mistakenly considered an eugenic measure; it should be replaced with increasing discrimination in selecting any marriage partner, white or colored.

MISCEGENATION

I. Issue of miscegenous marriages declared illegitimate in Nevada, Florida, Kentucky.

II. Regulation of extra-marital relationships between races.

State	Fine		Imprisonment
Alabama			2 to 7 years
Nevada	$100 to $500	and/or	6 months to 1 year
N. Dakota	to $500	and/or	to 12 months
S. Dakota	to $1,000	and/or	to 10 years
Tennessee			1 to 5 years in penitentiary or fine and imprisonment in county jail

III. Miscegenous marriages of out-of-State residents recognized in Idaho and Arizona.

IV. Miscegenous out-of-State marriages made by State residents not recognized by Mississippi and Arizona.

V. Miscegenous out-of-State marriages made by State residents punished as if made in state by

Delaware ($100 fine or 30 days in jail)

Texas (2 to 5 years in state penitentiary)

VI. Out-of-State miscegenous marriages valid within state in Colorado.

VII. Birth certificates checked for issue of miscegenous marriages whose parents are then prosecuted by the Attorney General in Georgia.

Miscegenous Marriage Laws in the United States

State	Racial intermarriage prohibited between whites and							
	Chinese	Indian	Japanese	Malay	Mestizo	Mongolian	Mulatto	Negro
Alabama							x	x
Arizona		x				x	x	x
Arkansas							x	x
California				x		x	x	x
Colorado							x	x
Delaware							x	x
Florida							x	x
Georgia							x	x
Idaho						x	x	x
Indiana							x	x
Kentucky							x	x
Louisiana		x						x
Maryland							x	x
Missouri						x	x	x
Mississippi						x	x	x
Montana	x		x				x	x
Nebraska	x		x				x	x
Nevada		x		x		x	x	x
North Carolina							x	x
North Dakota							x	x

	Chinese	Indian	Japanese	Malay	Mestizo	Mongolian	Mulatto	Negro
Oklahoma							x	x
Oregon	x*	x						x
South Carolina		x #			x		x	x
South Dakota				x		x°		x
Tennessee							x	x
Texas							x	x
Utah						x		x
Virginia							x	x
West Virginia								x
Wyoming				x		x	x	x

* or Kanaka

or half-breed

° or Corean

CHAPTER VI

CONCLUSION

In a statutory study such as this it is hard to come to conclusions other than the findings which have been presented in the foregoing chapters.

It might be noted that the miscegenous marriage laws seem to come into existence whenever, and wherever, there is enough economic pressure exerted against an unassimilated race. In the southern states there are rigid prohibitions and drastic punishments for those whites who would intermarry with a negro or mulatto. On the west coast, where the oriental has recently ceased to be a mere servant and, after years of hard work at often extremely low wages, has accumulated adequate capital to set up business enterprises which interfere with local capital, we find recent laws directed against their intermarriage with Caucasians. Those states which have relatively few persons of color among their residents have no interracial marriage regulations, we have found. The indiscriminate prohibition of racial intermarriage has been shown to be in violation of the eugenic principal.

The recent developments in widespread health education have resulted in the legislative regulation of venereally diseased persons. The first law was passed

by Washington in 1909 and now twenty-two more states have like statutory regulations. At the present time Wisconsin has a bill before the legislature which would make prenuptial examinations compulsory for women as well as men. The limitation of venereal control to men has been the great weakness in this legislation. Statutory legislation which would require prenuptial examinations for both sexes and prohibition of marriage until a cure is effected where venereal infection is found is now being considered by the Illinois legislature. Progress is being made in the right direction and while health education continues to be spot lighted we can expect further legislation along this line. The four state laws prohibiting, directly or indirectly, the marriage of tuberculous persons are another fruit of the recent popularization of the nature of the disease.

The causes of insanity are still under debate. Professor Wilder D. Bancroft of Cornell University and his associates have recently come to the conclusion that it is caused by the coagulation of some of the proteins of the brain and sensory nerves.[1] Dr. Carney Landis of the New York Psychiatric Institute and Hospital says it is due to the hardening of the arteries

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1 Johnson, Wingate M., "A New Theory of Insanity", American Mercury, January 1933, 64-7.

of the brain affecting only persons beyond middle age and the increase in insanity incidence from two to fourteen per one hundred thousand within the last twenty-two years is due to the increased life span.[2] Other authorities are coming to feel insanity is not so incurable as previously thought. The present national insanity recovery is forty percent.[3] New York hospitals during the last fifteen years have shown that only seventeen percent of their mental patients remain in confinement at the end of that time.[3] Now that the role of syphilis as a leading cause for mental disease, or paresis, has been discovered and now that syphilis is being brought under control to a greater and greater extent, it may well be that our insanity rate will decrease. If the disease theory of insanity as opposed to the hereditary one, continues to gain in favor and popular acceptance, we can expect a diminution of interest in the marriage regulation of this group.

At the present writing, mental deficiency continues to be thought of as largely native and hereditary. Only seven states do not have restrictions of their marriage. However, it is in the spread of such laws as

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2 "Insanity Increase", Scientific American, May 1936, 277.

3 "Conquering 'Man's Last Specter'", Literary Digest, December 7, 1935, 16.

enacted by Nebraska and New Hampshire which permit marriage of these groups if the individuals are sterilized that we will find any satisfactory control of the feeble-minded.

Epilepsy is still little understood but recent promising investigations have been started by governmental agencies. As we learn more about its nature, we can better devise legislation which will cope with the problem.

This study of eugenic marriage legislation does not pretend to state the "law." Such a statement can be made only after a careful review of statutes and judicial decision in the various jurisdictions.

The materials of this thesis, including literature on eugenics and the statutes of forty-eight states, show clearly the confusion in the popular mind of what data in the field of eugenics is scientific. The scientists themselves are in disagreement as to which defects and diseases are hereditary and which are the result of environmental factors. Legislatures often reflect a prevailing and sometimes popular rather than a scientific point of view. Interest in the control of the expansion of costly groups in society runs high. It is to be hoped that proponents of legislation seeking to limit marriage to the eugenically sound will carefully study

the recent and expected output of scientific investigation and refrain from hasty, emotional and unsound legislation.