

In Sickness and in Health?
Wisconsin's Eugenic Marriage Law, 1913–1981

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Introduction

Pregnant and engaged to be married, a young Italian woman in early twentieth century Milwaukee waited. Her stomach was already so swollen that Juvenile Protection Association officers were concerned that a child would be born before the marriage ceremony could take place. In an effort to speed matters up, her fiancé had gone before the district attorney, seeking a marriage license and instead receiving an order to submit to the mandatory pre-marital examination required by Wisconsin's eugenic marriage law. This test would determine whether or not he had venereal disease—in other words, whether or not he was allowed to marry.¹

Passed on July 23, 1913, Wisconsin's eugenic marriage law dictated that all men seeking marriage licenses had to present a physician's certificate "setting forth that such person is free from acquired venereal diseases so nearly as can be determined by physical examination and by the application of the recognized clinical and laboratory tests of scientific search." The physicians, required to be "persons of good moral character and of scientific attainments and at least 30 years of age," could charge no more than \$3.00 (about \$73 in 2017 currency) for this examination.² Noncompliance was punished harshly. Physicians accused of having knowingly signed false statements would be charged with perjury and have their medical licenses revoked. Couples who attempted to evade the law by fleeing to another state would be imprisoned if they returned to the state within a year of their marriage. Moreover, "any party or parties having knowledge of... the examination" who disclosed information about it would be "guilty of a

¹ Bernard C. Roloff, "The 'Eugenic' Marriage Laws of Wisconsin, Michigan and Indiana," *Journal of Social Hygiene* 6 (1920): 231.

² Hugh Cabot, "Syphilis and Society," *Journal of Social Hygiene* 2 (1916): 352; US Inflation Calculator, accessed March 30 2017, <http://www.usinflationcalculator.com/>

felony, and... punished by imprisonment in the state prison not less than one year nor more than five years.”³

The young Italian woman ended up giving birth to her child out of wedlock. The physician had determined that her would-be-husband was infected with venereal disease and therefore unfit for marriage, as the disease was spread through sexual intercourse.⁴ That said intercourse had already occurred was considered irrelevant. Until the man was cured, there would be no marriage, only an illegitimate child, an unmarried mother, and a syphilitic man, all of whom would now carry these stigmas with them for the rest of their lives.

To say the law was polarizing is an understatement. Immediately following its passage, it was heavily debated in government reports, medical journals, and national newspapers. A *Racine Journal News* article published on January 8, 1914 called the law “the grandest and greatest act since the Christian era began.”⁵ The January 9 edition of the same paper called it “a farce, perpetuated upon an already long-suffering public by a few crank legislators who have neither ability nor sense.”⁶ An assistant prosecuting attorney of Milwaukee initially regarded it as “one of the best jokes of the season,” then after seeing its effects, became convinced that it was “one of the most beneficial pieces of legislation ever passed in Wisconsin.”⁷ Some critics targeted specific problems with the law, such as the inadequate examination fee and potential for fraud. Others derided it as the latest progressive experiment conducted by “state university barons,”

³ Cabot, “Syphilis and Society,” 353.

⁴ Roloff, “‘Eugenic’ Marriage Laws of Wisconsin,” 231. It is not clear whether the doctor in this specific anecdote actually used the Wassermann test or merely conducted a physical examination.

⁵ “Racine Doctors Refuse to Examine Eugenic Grooms,” *Racine Journal News*, January 8, 1914, 7. Newspaper Archive (306829754).

⁶ “The Eugenic Marriage Law Again,” *Racine Journal News*, January 9, 1914, 8. Newspaper Archive (54412211).

⁷ Michael F. Guyer, “Review of Wisconsin ‘Eugenics’ Legislation,” in *Transactions of the Annual Meeting*, ed. American Child Hygiene Association (Baltimore: Franklin Printing Company, 1917), 103-104.

“freak-crazed, alleged reformers,” and a “nest of university cranks.”⁸ Ironically, a few even blamed the groups whom the law disadvantaged the most: immigrants, racial minorities, and women. One anonymous physician condemned it as “a vicious law, as are most of these anti-American laws now being foisted on the people,” while another claimed it was a “farce” that was “written by one or two women.”⁹

Those who opposed the law mainly did so on the grounds of it being ineffective, not unwarranted. As a leader in progressive politics, Wisconsin enacted many public health initiatives in which the state acted as a guardian, using regulation to educate and protect the masses. On one hand, physicians applauded the educational value of the law; on the other, many believed the law to be a logistical nightmare that, at best, did nothing to prevent the spread of syphilis. One author, going by the pseudonym “Eugene,” humorously summed up the situation in *The Alienist and Neurologist*:¹⁰

For luckless “Wisconsinners” we may feel much sympathee.
 But it’s right, we all agree,
 To protect the familiee
 And safeguard posteritee.
 The thing about law that fails most dismalee—
 IT DEMANDS OF THE M.D. AN IMPOSSIBILITEE!
 If he “try for to” comply and his honest efforts fail,
 First thing he knows, a “copper” may be “campin’ on this trail”
 And “pinch” him in his grief,
 Like any common thief,
 And lug him off to jail.¹¹

⁸ Progressivism, in this thesis, does not refer to the word in its modern context but rather as it was practiced in the Progressive Era (1890s–1920s). Progressives sought to fix the problems of industrialization and immigration with sweeping public health reforms such as eugenic marriage laws. See “Eugenic Marriages Have Drawbacks,” *Racine Journal News*, January 2, 1914, 8. Newspaper Archive (306829697); “The Eugenic Marriage Law Again,” 8; “Eugenic Stupidity,” *Janesville Daily Gazette*, January 7, 1914, 4. Newspaper Archive (52822877).

⁹ Fred S. Hall, *Medical Certification for Marriage: An Account of the Administration of the Wisconsin Marriage Law As It Related to the Venereal Diseases* (New York: Russell Sage Foundation, 1925), 49.

¹⁰ An alienist is an archaic term for a mental health professional, such as a psychiatrist.

¹¹ Charles Hughes, “Wisconsin ‘Eugenic’ Marriage Law,” *The Alienist and Neurologist: A Journal of Scientific, Clinical, and Forensic Neurology and Psychiatry and Neuriatry* 35 (1914): 217.

Although the poem raised serious concerns, its humorous tone would seem to be out of place in a scientific medical journal; however, the eugenic marriage debate was not confined to political and medical circles. It permeated popular culture. The protagonist of a short story, in which a woman contracts syphilis by using a public drinking fountain, advocated for each state to “pass and enforce stringent laws causing persons so diseased to be isolated, just as lepers are, [so] there would be more hope in repressing the evil.”¹² An advertisement for the lost silent film *Damaged Goods* (which is, appropriately, about a couple who contract syphilis) capitalized on the controversy, asking, “Are you interested in the most vital question of the day? Do you believe in eugenic marriage?”¹³ Even famous satirical poet Arthur Guiterman lampooned Wisconsin’s law in the *Marshfield Times*:

A glad Utopia I see.
Advanced while others lag on,
Where none may wed on any plea
Without a doctor’s tag on.

Where every house is crammed with books,
Where money fills each wallet,
And every Well-born Baby looks
Like Robert M. La Follette!¹⁴

As the law withstood the opposing annual calls for its repeal and its expansion, however, the conversation stagnated until the confluence of the AIDS crisis and the mass repeal of eugenic marriage laws in the early 1980s renewed scholarly discussion about eugenic marriage laws. In 1988, legal associate Robert D. Goodman posited that the recently repealed eugenic marriage laws would no longer withstand the heightened scrutiny now required for laws involving the

¹² Allan M. Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (New York: Oxford University, 1987), 22.

¹³ “?”, *Waukesha Freeman*, November 11, 1915, 1. Newspaper Archive (53246812).

¹⁴ Arthur Guiterman, “Eugenic Wisconsin,” *Marshfield Times*, April 8, 1914, 4. Newspaper Archive (52888595).

right to marriage.¹⁵ His article was not merely an exercise in speculation, because many states were seeking to replace their eugenic marriage laws with new laws that would require pre-marital testing for HIV. Allan M. Brandt, a History of Science professor at Harvard, also compared the syphilis scare to the AIDs crisis so that modern policymakers could avoid the same pitfalls in their efforts to prevent the spread of HIV.¹⁶

Those who didn't reevaluate these laws in a modern context looked back to their inception in the early twentieth century, searching for the underlying causes. Brandt claimed that Progressive Americans' concerns about syphilis actually stemmed from social anxieties about sexuality, gender, ethnicity, and class, and that these fears prompted legislation like Wisconsin's eugenic marriage law.¹⁷ Conversely, historian Matthew J. Lindsay put these laws in the context of institutional changes in marriage in his 1998 article. Whereas Victorian society viewed marriage as a beneficial economic necessity, Lindsay argued that Progressive eugenicists "believed that many marriages threatened the health of the polity" and that "equal citizenship should be awarded selectively, according to the dictates of science," or rather, eugenics.¹⁸ In the thrall of the eugenics movement, the state sought to limit marriages that might produce defective offspring, one of their main targets being marriages between syphilitics. A 1937 thesis by Mary Laack Oliver, a UW-Madison M.A., demonstrates the eugenic rationale behind these nationwide laws "whose aim it is to limit the procreation of the unfit," concluding that "legislative efforts to

¹⁵ Robert D. Goodman, "In Sickness or in Health: The Right to Marry and the Case of HIV Antibody Testing," *DePaul Law Review* 38, no. 1 (1988): 109.

¹⁶ Allan M. Brandt, "AIDS in Historical Perspective: Four Lessons from the History of Sexually Transmitted Diseases," *American Journal of Public Health* 78, no. 4 (1988): 367, doi: 10.2105/AJPH.78.4.367.

¹⁷ Brandt, *No Magic Bullet*, 6.

¹⁸ Matthew J. Lindsay, "Reproducing a Fit Citizenry: Dependency, Eugenics, and the Law of Marriage in the United States, 1860-1920," *Law & Social Inquiry* 23, no. 3 (1998): 542, doi: 828869; Lindsay, "Reproducing a Fit Citizenry," 566.

prohibit marriage, and subsequent continuation, of these defective strains, seem a logical point of attack on this problem.”¹⁹

This scholarship studying the causes of eugenic marriage laws is invaluable when examining the effects of the law, on which less work has been done. If Brandt is correct that social anxieties were partially to blame for these laws, the natural follow-up question is how the law’s implementation addressed these anxieties—whether it had the effect of preventing marriages between eugenically inferior couples. In 2009, economics professors Kasey S. Buckles, Melanie Guldi, and Joseph Price used the mass repeal of the nation’s eugenic marriage laws to study the effect that blood test requirements (BTRs) had on the decision to marry.²⁰ They found that these tests were indeed a marriage deterrent, especially for lower socio-economic groups.²¹

With this thesis, I extrapolate that Wisconsin’s eugenic marriage law had a similar effect on the marriage rate for populations considered eugenically inferior. Unlike Brandt and Lindsay, who look at broad societal change, I am focusing on a specific and significant case study: Wisconsin’s eugenic marriage law. Although eight other states also barred syphilitic persons from marrying at the time, Wisconsin’s law attracted the most attention because it was comparatively enforceable. Instead of relying on people self-reporting their syphilitic state, men in Wisconsin had to undergo a controversial, flawed physical examination, after which a

¹⁹ Mary Laack Oliver, “Eugenic Marriage Laws of the Forty-Eight States” (M.A. Thesis, University of Wisconsin–Madison, 1937), 11; Oliver, “Eugenic Marriage Laws,” 26.

²⁰ Wisconsin’s eugenic marriage law is not, by definition, a BTR. Physicians in the early years of the law often did not (or could not) perform blood tests. Only as the training and technology became more available in later years did blood tests become the standard method of testing for syphilis. Even so, the law clearly fits in the model of Buckles, Guldi, and Price: “The BTRs we consider were enacted in the first half of the twentieth century as part of public health campaigns to reduce the spread of communicable diseases and prevent birth defects... The laws required couples applying for a marriage license to be screened for certain conditions, commonly rubella or syphilis.” See Kasey S. Buckles, Melanie Guldi, and Joseph Price, “Changing the Price of Marriage: Evidence from Blood Test Requirements,” *Journal of Human Resources* 46, no. 3 (2009): 2, doi: 10.3386/w15161.

²¹ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 1.

physician would pronounce them safe for marriage. This alleged enforceability, along with the extensive public debates about Wisconsin's law, makes it an ideal candidate for studying the effects of such a law.

My thesis is less concerned with questions of effectiveness and legality except as they relate to framing this law as a screen, a law that on paper served one purpose but in practice created a discriminatory effect because of the social anxieties Brandt lists. The law gave physicians and government officials the discretion to police marriage in ways not directly mentioned in it—ways that, directly or indirectly, discriminated against certain populations. These populations, of course, tended to be the ones that were considered morally suspect and eugenically inferior. Racial biases, in particular, obscured medical professionals' understanding of venereal disease.²² In this way, this thesis is as much a history of race and class as it is a study in legal or medical history. Although the law's eugenic component only explicitly included people with venereal disease, different interpretations in the legal sphere and medical discourse reveal the sexually, economically, ethnically, and racially discriminatory stereotypes that were embedded in the law and acted upon in its enforcement.

²² Although this thesis relies heavily on Wisconsin-based sources, many of the medical studies on syphilis were written by medical professionals who practiced in states other than Wisconsin. While I recognize that there may be regional differences in opinions about syphilis, especially concerning race, the medical profession is also a national and international community. Especially because venereal disease was not widely studied at the time, national publications and education efforts undoubtedly reached and influenced Wisconsin's physicians. The available Wisconsin-based sources reflect as much.

Part One: Venereal Disease in a Progressive Society

Before examining the consequences of the law, it is necessary to understand the society in which the law operated. The turn of the twentieth century ushered in a new Progressive Era in medicine and public health that was still intertwined with Victorian ideals about marriage and purity. In this environment, syphilis in particular was seen as a scourge to society, both because of its debilitating symptoms and because of the stigma surrounding sex. Such an environment, ripe with moral panic and questionable science, provided a stage where Wisconsin's eugenic marriage law could flourish.

Physicians in the early twentieth century lamented their insufficient knowledge of syphilis, but amidst the incomplete and often inaccurate information, one universally accepted fact was that syphilis posed a significant threat. Harvard Medical School's Dr. Hugh Cabot called it "the most serious of the contagious diseases which has not as yet been subjected to control."²³ "There is no destroyer of the home and family that works with more force and power and vigor," remarked Wisconsin's state health officer, C. A. Harper, "[and] no diseases which incapacitate a man physically, morally and mentally as Gonorrhea and Syphilis."²⁴

Part of what made syphilis so dangerous was its ability to disguise itself. Until the discovery of spirochetes, the specific microbes that cause syphilis, in 1905 and the subsequent development of the Wassermann test in 1906, physicians had no method of diagnosing syphilis before its symptoms manifested.²⁵ With the new Wassermann test, however, they could analyze a blood sample and look for the antibodies that defended the body against syphilis. The more

²³ Cabot, "Syphilis and Society," 347.

²⁴ C. A. Harper, *Twenty-Fifth Report of the State Board of Health of Wisconsin* (Madison: Democrat Printing, 1914), 113.

²⁵ James H. Jones, *Bad Blood: The Tuskegee Syphilis Experiment* (New York: Free Press, 1981), 24-25; Brandt, "AIDS in Historical Perspective," 369.

antibodies detected, the more likely it was that the patient had syphilis.²⁶ The accuracy of the test, however, was questionable. As many as 25% of patients who received positive results were actually free of infection.²⁷ Conversely, Chief Justice John B. Winslow of the Wisconsin Supreme Court alleged that patients could force false negatives by drinking whiskey 24 hours before the test.²⁸

Even if physicians correctly identified the disease, they would often cover it up with a “more euphonious title.” Therefore, although syphilis seldom appeared on death certificates, in 1918, Lieutenant-Colonel Edward B. Vedder from the U.S. Army Medical Corps revealed that syphilis was “the real cause of death in all cases of paresis, locomotor ataxia and aortic aneurysm [and] in many cases of cerebral hemorrhage and apoplexy, organic diseases of the heart, liver and kidneys, [along with] one-fifth of all cases of pulmonary tuberculosis.”²⁹ These factors lead him to conclude that syphilis was “the greatest cause of death of men in the large cities.”³⁰ Sir William Osler also noted that, if these deaths caused by syphilitic conditions were included, syphilis would move from tenth place in the Registrar-General’s 1915 mortality report all the way to the top, “an easy first among infections.”³¹

Venereal diseases weren’t just dangerous because they were deadly. Their methods of attack included invalidism, blindness, sterility, miscarriage, nerve affections, and insanity—afflictions that were sometimes seen as worse than death.³² Dr. Michael Guyer from the University of Wisconsin-Madison believed that gonorrhea decreased birth rates “no less certainly

²⁶ Virginia Boyer Miller, “Tests for Syphilis: An Explanation of the Wasserman Test,” *The American Journal of Nursing* 30, no. 6 (1930): 709. JSTOR (3410619).

²⁷ Brandt, “AIDS in Historical Perspective,” 369.

²⁸ *Peterson v. Widule*, 157 Wis. 641 (1914), 655.

²⁹ Edward Bright Vedder, *Syphilis and Public Health* (Philadelphia and New York: Lea & Febiger, 1918), 17-18.

³⁰ Vedder, *Syphilis and Public Health*, 19.

³¹ William Osler, “The Campaign Against Venereal Disease,” *The British Medical Journal* 1, no. 2943 (1917): 695.

³² John H. Cunningham Jr., “Venereal Disease and Its Influence,” *Wisconsin State Board of Health Quarterly Bulletin* 2, no. 8 (1911): 136-140.

than destruction by war” and that syphilis was “as responsible for the extinction of family lines as is voluntary limitation of offspring.”³³ Although these statements sound dire, some evidence supported his fears about depopulation. Dr. John Cunningham Jr. recounted a study of 90 women “of the better class” who became pregnant in their first year of married life after having been infected by their husbands. Fifty of them miscarried, 38 gave birth to children who died soon after, and only two had children who survived.³⁴

Estimates of the venereal disease transmission rate varied considerably. Many medical experts incorrectly believed it could be casually transmitted via “pens, pencils, toothbrushes, towels, and bedding, and medical procedures.”³⁵ Owing to this extragenital transmission, Vedder noted, “it is probable that whole races become thoroughly syphilized much faster than they become civilized.”³⁶ Indeed, “the most conservative views,” according to W. F. Lorenz, Director of the Wisconsin Psychiatric Institute, held that syphilis existed in 10% of the adult population.³⁷ Cabot estimated that syphilis infection rates were similar to that of tuberculosis but that society was “unlikely to get reliable figures for a long time to come” because “the victim of syphilis [was] far more illusive—a condition for which we have ourselves largely to blame.”³⁸ As for gonorrhea, physicians came to a consensus in 1911 that “at least 50% of the male population of the United States have had the disease, one or more times, before the age of thirty,” with some estimates going as high as 95%.³⁹

³³ Michael F. Guyer, “Review of Wisconsin ‘Eugenics’ Legislation,” 101.

³⁴ Cunningham, “Venereal Disease and Its Influence,” 137.

³⁵ Brandt, “AIDS in Historical Perspective,” 367.

³⁶ Vedder, *Syphilis and Public Health*, 32.

³⁷ W. F. Lorenz, “Examination of Blood for Syphilis,” in *Proceedings of the Biennial Conference of Health Officers of the State of Wisconsin*, ed. Wisconsin State Board of Health (Madison: Wisconsin State Board of Health, 1916), 52.

³⁸ Cabot, “Syphilis and Society,” 359.

³⁹ Cunningham, “Venereal Disease and Its Influence,” 133.

Doctors also agreed that people most frequently contracted venereal disease between the ages 19 and 29, when most marriages occurred and men were in their prime.⁴⁰ Although the former was more frequently used as an argument for the eugenic marriage law, the latter fact is just as crucial to understanding why some people supported the law with such fervor. Because venereal diseases targeted young able-bodied men, the cost to society exceeded the \$15 million spent annually on treatment and the additional \$11.3 million for institutional care. A study in the 1930s calculated that venereal diseases accounted for \$84 million of lost labor annually.⁴¹

But perhaps the greatest threat venereal disease posed to Progressive society was not medical or monetary, but moral. Since syphilis is primarily a sexually transmitted disease, it was associated with promiscuity and infidelity—highly undesirable characteristics in a society that above all valued “discipline, restraint, and homogeneity.”⁴² Since most sexual intercourse was considered to involve consenting partners, Progressive Americans believed that any disease acquired during the act was the fault of the participants.⁴³ Tying disease to morality allowed physicians to deny responsibility for the societal problem of syphilis. Instead, they could claim that the system protected the good people and that only those who transgressed suffered.

This desire to fix the blame rather than the problem itself hindered the study of syphilis, as did the patients’ desire for secrecy. Venereologist Prince Morrow explained, “Social sentiment holds that it is a greater violation of the properties of life to publically mention venereal disease than privately to contract it,” understandably so.⁴⁴ Syphilitics who did come forward were publically shamed and ostracized under the guise of public safety. When physicians discovered “a case or suspected case of venereal disease,” the Wisconsin State Board of Health instructed

⁴⁰ Harper, *Twenty-Fifth Report*, 113.

⁴¹ Oliver, “Eugenic Marriage Laws,” 51.

⁴² Brandt, “AIDS in Historical Perspective,” 367.

⁴³ Jones, *Bad Blood*, 23.

⁴⁴ Brandt, “AIDS in Historical Perspective,” 368.

them to affix “a red card not less than 11 by 14 inches, bearing the inscription ‘VENEREAL DISEASE HERE,’ printed in black with bold face type not less than 3 ½ inches in height... in a conspicuous place” by the entrance. No one was allowed to enter these premises, and the infected occupant was forbidden from leaving without written permission from the local health officer.⁴⁵ In this way, the law played into the Victorian Compromise—the idea that vice could be tolerated so long as it remained marginalized and isolated. Lawrence Friedman explains that while crusaders had given up on eliminating vice entirely, they strove to “keep it within tolerable limits, prevent it from spreading, and confine it to places where it is visible and easily controlled.”⁴⁶ The eugenic marriage law served a similar function, banning syphilis from the marriage bed on paper while permitting married men to continue with their secret affairs. Unsurprisingly, this compromise protected respectable men at the expense of lower class women, immigrants, and racial minorities, whose reputations were slandered.

Although many physicians and public health officials called for an end to the “conspiracy of silence” surrounding venereal diseases, their practices still reinforced the Victorian code of sexual ethics.⁴⁷ For example, Vedder divided syphilis into two categories: syphilis of the innocent (syphilis insontium) and syphilis resulting from illicit intercourse (syphilis pravorum).⁴⁸ Marital syphilis where the husband infected the wife, the kind that the eugenic marriage law strove to prevent, was of course considered to be innocent. The belief in extragenital transmission via towels and toothbrushes, too, sustained Victorian values by giving respectable middle class people a method of infection that was within the bounds of Victorian morality.

⁴⁵ C. A. Harper, *Twenty-Seventh Report of the State Board of Health of Wisconsin* (Madison: Democrat Printing, 1919), 38.

⁴⁶ Lawrence M. Friedman, “Name Robbers: Privacy, Blackmail, and Assorted Matters in Legal History,” *Hofstra Law Review* 30, no. 4 (2002): 1102.

⁴⁷ Brandt, “AIDS in Historical Perspective,” 368.

⁴⁸ Vedder, *Syphilis and Public Health*, 135.

Physicians who contracted the disease, for example, could claim they became infected while treating one of their patients, a scenario that would be considered almost impossible today.⁴⁹

The social stigma surrounding venereal disease fostered an atmosphere of fear in which sexual impurity was associated with physical inferiority. In line with Victorian thinking, Morrow classified venereal diseases as “social diseases” that “[struck] at the very root of nature’s process for the perpetuation of the race.”⁵⁰ This fear, although exaggerated, was not entirely unfounded at the time; after all, the surviving children born of syphilitic parents often inherited the disease from their parents, frequently resulting in permanent invalidism. Moreover, many Americans believed that syphilis, although not strictly genetic, was a hereditary trait in that “each produce[d] his kind”—that is, that children born of syphilitics would be prone to criminality, degeneracy, and pauperism.⁵¹ Dr. W. S. Haven of Racine linked health and purity, insisting, “Children have a right to be well born. We must live pure lives if our children are to be right.”⁵²

What Dr. Haven meant by “well born” was “eugenic.” Popularized in the early twentieth century, eugenics was a branch of science that sought to improve the human race by breeding out defective traits, which often fell into racial and ethnic categories. Eugenicist Paul Popenoe, in his 1918 textbook *Applied Eugenics*, defined a eugenically superior person as one who is able “to live past maturity, to reproduce adequately, to live happily and to make contributions to the productivity, happiness, and progress of society.” He, like other eugenicists, advocated for “legal, social and economic adjustments” that would prevent eugenically inferior people from reproducing.⁵³ Although Popenoe ironically decried eugenic marriage laws for “masquerad[ing] as a eugenic propaganda” and bringing “undeserved reproach on the eugenics movement,”

⁴⁹ Brandt, *No Magic Bullet*, 22.

⁵⁰ Prince A. Morrow, *Social Diseases and Marriage: Social Prophylaxis* (New York: Lea Brothers, 1904), iii.

⁵¹ Brandt, *No Magic Bullet*, 19.

⁵² “Talks on Eugenics,” *Racine Journal News*, April 27, 1914, 3. Newspaper Archive (306837736).

⁵³ Paul Popenoe and Roswell Hill Johnson, *Applied Eugenics* (New York: Macmillan, 1918), v.

Wisconsin's law was tied to the eugenics movement by its very name, and the popularity of eugenics undoubtedly contributed to its passage.⁵⁴ Some, like Dr. Oscar Dowling, saw it as a starting point for other eugenic reforms. In his presentation before the American Public Health Association, he expressed his hope that someday, "the state [would] require much more than freedom from just one class of physical ills."⁵⁵ During an Alienists and Neurologists meeting, Dr. F. R. Drake of Waupun hailed the law as a eugenic success, claiming, "The faithful application of this eugenic dogma means a new order of nobility, a new aristocracy founded on something more stable than wealth and of infinitely more worth than social position."⁵⁶

Although the truth of his statement is questionable, the sentiment reflects what many Americans at the time believed: that eugenics could improve the currently floundering human race.⁵⁷ After all, historian Matthew J. Lindsay notes that politicians, social scientists, journalists, and reformers feared that the "quality of the American citizenry was rapidly deteriorating" because of "the declining birth rate of the 'better classes,' the relative fertility of the 'unfit,' and the unnatural selection of society's incapables due to the 'short-sighted kind-heartedness' of philanthropists."⁵⁸ Morrow, the eugenicist, blamed venereal disease for the sterility of the "respectable" classes, even though this assertion was at odds with the belief that lower classes contracted venereal disease at a higher rate.⁵⁹ As a result, one writer believed "with mathematical

⁵⁴ Popenoe and Johnson, *Applied Eugenics*, 195.

⁵⁵ Oscar Dowling, "The Marriage Health Certificate, A Deeply Rooted Social Problem," *The American Journal of Public Health* 5, no. 11 (1915): 1144.

⁵⁶ "Wisconsin Eugenic Law is Commended," *Janesville Daily Gazette*, July 14, 1914, 1. Newspaper Archive (52825201).

⁵⁷ Of course, as seen in the application of the law, both wealth and social position made it easier to get a marriage license. Anyone who did not fall under these categories was viewed as inherently suspect. In this way, the eugenics movement favored the existing upper class and not a "new aristocracy."

⁵⁸ Lindsay, "Reproducing a Fit Citizenry," 566.

⁵⁹ Brandt, *No Magic Bullet*, 19.

certainty” that upper class families would “simply cease to exist.”⁶⁰ Eugenic marriage laws fixed this problem by ostensibly preventing the unfit (syphilitics) from marrying.

Specifically, the law aimed to protect newly married women, seen as specimens of purity who held the best hope of preventing degeneration by birthing healthy children. Morrow posited that venereal disease victimized “young and virtuous women, the idolized daughters, the very flower of womanhood... endowed by nature with all those physical attributes of health and vigor which fit them to become mothers of the race.”⁶¹ Like Victorian society, the law assumed that women were passive and innocent until corrupted by men, a model which both promoted eugenic ideals and prevented women from embracing new urban temptations that could have given them more social autonomy. Men, on the other hand, were almost expected to be promiscuous. Dr. Julia Riddle, a rare female physician from this era, criticized the double standard women were held to. Whereas girls were taught by their mothers to be “sweet and pure,” she said, “the boy’s teacher [was] the street-corner bum,” leading women to be “looked upon by men as his special prey.”⁶² Indeed, one reverend praised the law specifically because it “scare[d] the girls.”⁶³ Invoking fear, of course, was one way to ensure women adhered to this Victorian model wherein their sexuality could be controlled.

Supporters of the law were not entirely wrong in framing women as the prey of men when it came to marital syphilis. According to Jean Fournier, a nineteenth century specialist in venereal diseases, one in five syphilitic women contracted the disease from their husbands—or,

⁶⁰ Lindsay, “Reproducing a Fit Citizenry,” 566.

⁶¹ Lindsay, “Reproducing a Fit Citizenry,” 575.

⁶² “Doctors On Stand In the Vice Probe,” *Oshkosh Daily Northwestern*, July 1, 1914, 2. Newspaper Archive (9742177).

⁶³ “How to Evade the New Eugenic Law; Marry by Contract,” *Racine Journal News*, January 20, 1914, 12. Newspaper Archive (306829882).

as Vedder rephrased it, “and the other four [were] all immoral.”⁶⁴ Dr. Lucius Bulkley recorded that 85% of married women were infected by their husbands, and Morrow himself found that 70% of the women he treated for syphilis were “respectable married women” whose husbands had infected them.⁶⁵ Such women were depicted as “mutilated, unhappy wreck[s]” whom their husband’s physicians had failed.⁶⁶ Of course, many women may not have even realized what was ailing them. When detailing how to inform wives of their disease, Morrow wrote:

The fixed rule of professional conduct in these cases, from which there can be no deviation, is that no information or hint even of the nature of the disease should come from the physician... he must zealously guard the secret of the patient... From this point of view Langlebert advises that ‘the husband should have in the physician a faithful and intelligent ally who conspire together to conceal the nature of the disease.’⁶⁷

He justified this practice by claiming withholding this information spared the wife “mental anguish, the sense of injury, shame, and humiliation,” again reinforcing the extent to which syphilis was stigmatized.⁶⁸ The secrecy with which the physician was obliged to operate meant that the treatment itself suffered, as did the women. Given these scenarios, it is understandable why some people so avidly supported the law, which aspired to decrease the number of wives infected. Wisconsin’s eugenic marriage law, the *Racine Journal-News* contended, would have prevented the suffering of the new wife of King Manuel II— a “morally putrid and physically decayed specimen... who had within him the Devilish fires of Hades.”⁶⁹ By framing the law as “a great opportunity to raise the standard of honor and justice toward women,” supporters drew on Victorian stereotypes to justify the law.⁷⁰

⁶⁴ Comments such as these reveal Vedder’s biases, which may have affected the reliability of his data. Vedder’s reliability is further explored in the section about race. See Vedder, *Syphilis and Public Health*, 136.

⁶⁵ Morrow, *Social Diseases and Marriage*, 191; Cunningham, “Venereal Disease and Its Influence,” 134.

⁶⁶ Dowling, “The Marriage Health Certificate,” 1143.

⁶⁷ Morrow, *Social Diseases and Marriage*, 67-68.

⁶⁸ Morrow, *Social Diseases and Marriage*, 68.

⁶⁹ “Juicy Scandal Talk for Europe,” *Racine Journal News*, October 6, 1913, 6. Newspaper Archive (54411148).

⁷⁰ Dowling, “The Marriage Health Certificate,” 1144.

Even as Morrow and other social reformers fueled the social stigma of syphilis, they also called for education campaigns to broach the uncomfortable subject of sexual hygiene. The concept of public health was a relatively new one, driven by the unprecedented advances in medical knowledge. Dowling predicted that control of public health would be “the most vital function of the state” as soon as science gave “positive data as to the fit and the unfit” and the state “put forth its strong arm for race betterment.”⁷¹ In the case of syphilis, the Wassermann test provided this scientific data by which people could be deemed fit or unfit. When people questioned the wisdom of relying on such eugenic science, the Wisconsin State Board of Health Quarterly Bulletin countered in 1911 that “the tests would probably not miscarry to any greater degree than justice now miscarries in our courts” and that the probable “unconstitutionality can be overcome... whenever the people once get headed in the right direction.”⁷² That constitutionality was something to be overcome rather than a venerated standard of legislative limits reveals the extent to which health officers believed in the power of public health and eugenics at preventing crime and degeneration.

Milwaukee lawyer Edward W. Spencer predicted in 1915 that legislation policing the marriage of syphilitics would be “largely a question of public and legislative wisdom and policy, and not of constitutional law or the limitation of police power.” He wrote, “So long as laws for its regulation [could] find reasonable justification as public health measures... or as promotive of public order and morality and the protection of individuals from fraud and injury, they will doubtless be upheld as a constitutional exercise of this power.”⁷³ Wisconsin’s *Peterson v. Widule*, the state supreme court case that upheld the eugenic marriage law, fits into that pattern.

⁷¹ Dowling, “The Marriage Health Certificate,” 1144.

⁷² “What Hygiene Can Do,” *Wisconsin State Board of Health Quarterly Bulletin* 2, no. 7 (1911): 119.

⁷³ Edward W. Spencer, “Some Phases of Marriage Law and Legislation from a Sanitary and Eugenic Standpoint,” *The Yale Law Journal* 25, no. 1 (1915): 64. JSTOR (787529).

It showcases the arguments the government used to justify the law—arguments that, when implementing the law, did not always hold up.

Part Two: The Law in Principle

On January 2, 1914, Alfred A. Peterson and his fiancée Hattie J. Schmidt, both 29-year-old Milwaukee residents, applied for a marriage license without the signed health certificate. Although he had approached four different physicians and offered them the prescribed \$3 fee, all four had refused to sign on the grounds that \$3 was insufficient compensation for the Wassermann test. When County Clerk Louis Widule refused to grant Peterson a license, Peterson took Widule to court in a test case of the two-day-old eugenic marriage law.

His gambit initially paid off. On January 20, Milwaukee Circuit Judge Franz C. Eschweiler, who would be appointed to the Wisconsin Supreme Court in 1916, held that the law was an “unreasonable and material impairment of the unalienable right of the fit and proper to enter into the marriage state.” Because it was “violative of the rights secured by our constitution” the law was “therefore void.”⁷⁴ His ruling was based on the fact that the Wassermann test cost at least \$15, which the \$3 fee would not come close to covering. He also declared that it discriminated against men because women were not required to submit themselves for an examination and that it interfered with the religious liberty of the marrying parties. When the county office opened the next day, half a dozen couples were already waiting to procure licenses without certificates; however, despite Eschweiler’s ruling, Widule refused to grant any licenses that did not comply with the law until the county board voted on whether to appeal the ruling—which they did.⁷⁵

Even before Peterson brought forth his suit, members of the executive branch actively defended the law. State Attorney General Walter C. Owen—another future Wisconsin Supreme Court Justice—issued an opinion on December 22, 1913, nine days before the law went into

⁷⁴ “Eugenic Wedding Law Is Declared Illegal Today by a Circuit Judge,” *La Crosse Tribune*, January 20, 1914, 1. Newspaper Archive (307126455).

⁷⁵ “No Certificate, License Refused,” *La Crosse Tribune*, January 21, 1914, 6. Newspaper Archive (307126470).

effect. It clarified that the law's "obvious purpose was to require only such an examination and test as the ordinarily reputable licensed physician of scientific attainments... could be reasonably expected to make for the fee of \$3.00," which did not include the Wassermann test. He maintained that the law should be given a "practicable and workable construction, rather than one that [would] defeat its purpose and possibly render it unconstitutional and void."⁷⁶ In his second statement on January 5, 1914, he insisted the law was not only "well within the police powers of the state" but "should be applauded by all society."⁷⁷ Of course, his words held no legal weight; at best, according to Bernard C. Roloff of the Illinois Social Hygiene League, Owen could "minimize the moral effect of the 'eugenic' law."⁷⁸ That doctors had free reign to choose an unconstitutional reading of the law was troubling, as was the government's focus on protecting the law rather than eliminating its potentially discriminatory effects.

Given the severity of the penalty for signing a false certificate, Owen's reassurances did not comfort many physicians, who thought the Wassermann test was the only way to definitively discern whether the applicant was free of syphilis. In response to Owen's opinion, the Medical Society of Milwaukee County voted to go on strike and appointed a committee to convince legislators of the "utter absurdity" of the law.⁷⁹ The Physicians' Business Association of Racine also refused to sign any certificates unless the laboratory requirement was stricken from the law.⁸⁰ Rather than prompting legislators to reconsider the law, these pacts had the opposite effect. Owen accused the physicians of coming "dangerously near conspiracy" and hinted that

⁷⁶ Hall, *Medical Certification for Marriage*, 16-17.

⁷⁷ Walter C. Owen, *Opinions of the Attorney General of the State of Wisconsin, Volume 3 (January 1, 1914 – December 31, 1914)* (Madison: Wisconsin Attorney General's Office, 1914), 525.

⁷⁸ Roloff, "'Eugenic' Marriage Laws of Wisconsin," 233.

⁷⁹ "Balk at the New Eugenic Law," *Stevens Point Daily Journal*, December 15, 1913, 2. Newspaper Archive (3980544).

⁸⁰ "Racine Doctors Refuse to Examine Eugenic Grooms," 1.

“such conditions [would] be looked into,” leading at least one newspaper to speculate that doctors who opposed the law would be prosecuted.⁸¹

This atypically hostile response perhaps betrays the government’s lack of confidence in the law’s constitutionality. Despite Owen’s staunch defense of the law, the press generally assumed that the Wisconsin Supreme Court would declare the law to be unconstitutional. Christine Rosen notes that even the law’s defenders predicted defeat, to the extent that many believed the governor would call a special session of the legislature specifically to repeal the law.⁸² Thus, it was a surprise when the Wisconsin Supreme Court handed down a 3-2 decision in *Widule*’s favor, upholding the law. Comprised of an opinion by Chief Justice John Winslow, a concurrence by Justice William Timlin, and a dissent by Justice Roujet Marshall, the *Peterson v. Widule* ruling is bounded in conflicting ideas about eugenics, gender, and public health. Although the ruling legitimized the eugenic marriage law, the justices’ contradictions—both in their arguments and in their facts—also paved the way for physicians to interpret the law in discriminatory ways.

Part of the problem was that the justices didn’t merely disagree about the law’s constitutionality, but about the fundamentals of the law itself. The law’s relation to the eugenics movement was a particular point of contention. Winslow justified the law by tying it to the fears of eugenicists, arguing, “Society has a right to protect itself from extinction and its members from a fate worse than death.”⁸³ Conversely, Marshall contended that the law actually caused “social and racial regression” by “so oppressively interfering with the constitutional right of

⁸¹ “Here Is More Trouble,” *Stevens Point Daily Journal*, January 10, 1914. Newspaper Archive (13610745).

⁸² Christine Rosen, *Preaching Eugenics: Religious Leaders and the American Eugenics Movement* (New York: Oxford University Press, 2004), 68.

⁸³ *Peterson v. Widule*, 157 Wis. 641 (1914), 647.

marriage,” leading unmarried people to copulate.⁸⁴ Rather than seeing the law as a tool of eugenics, like Winslow, Marshall believed that “removal of all responsibility for self-care would eventually result in a weak and degenerate race.”⁸⁵ To add to the confusion, Timlin claimed the law had “little relation to that pseudo science called ‘Eugenics’” despite its name.⁸⁶ Ironically, in decrying the eugenics movement, he fell most closely in line with what popular eugenicists like Paul Popenoe believed about the law. By arguing that the law helped, hurt, and had no relation to the eugenics movement, these justices cast doubt on how the law was to be read in terms of eugenics. Their disagreement reflects the broader confusion about eugenics and its legitimacy as a science at the time. The only common ground to fall back on was Winslow and Marshall’s mutual support of preventing degeneracy, and although they could not agree on whether the law achieved that goal, they set a clear standard for physicians.

Although they could not come to a consensus on how the law coincided with the eugenics movement, the justices agreed on one aspect of the law’s purpose: protecting the purity of married women. Winslow stated that the purpose of the law “plainly” was to prevent syphilitic men from infecting their innocent wives—a “tremendous evil,” which none of the justices contested.⁸⁷ In fact, Judge Eschweiler found that the law discriminated against men for this very reason. Whether it was constitutional or not, many people thought not examining women was simply foolish, or as an anonymous physician put it, like “washing [only] one hand prior to performing an operation.”⁸⁸ “Eugene,” the anonymous satirist, more crudely protested:

But a flirty little female can do just as she’s a mind.
There’ll be no bloomin’ “copper” creepin’ up on her behind,

⁸⁴ *Peterson v. Widule*, 157 Wis. 641 (1914), 660.

⁸⁵ *Peterson v. Widule*, 157 Wis. 641 (1914), 662.

⁸⁶ *Peterson v. Widule*, 157 Wis. 641 (1914), 665.

⁸⁷ *Peterson v. Widule*, 157 Wis. 641 (1914), 647.

⁸⁸ Hall, *Medical Certification for Marriage*, 51.

Creepin' up on her behind.⁸⁹

If the law's purpose was truly to prevent the transmission of venereal disease, why did it exclude half the population? To that end, Winslow granted that the law would be discriminatory towards men if women transmitted the disease at the same rate as men, which they did not. "The medical evidence in the case," he argued, "corroborates what we suppose to be common knowledge, namely, that the great majority of women who marry are pure."⁹⁰ Medical reports from the time perpetuated this generalization. In a 1917 report, Wisconsin State Health Officer C. A. Harper wrote, "in 20 cases the wife was infected from the husband and in 5 cases the husband claims to have been infected from the wife."⁹¹ Presenting husbands infecting wives as a certainty and wives infecting husbands as a mere claim allowed the State Board of Health to uphold the concept of female purity and defend the law's choice to only test men. Despite concurring with Winslow in the ruling, Timlin once again contradicted Winslow, insisting the "main source of venereal infection is the prostitute" rather than men.⁹² Even so, he agreed that the legislature was justified in trying to prevent marital syphilis. Even Marshall, who disagreed with Winslow in almost everything, believed in the importance of protecting female purity. In fact, he favored "demanding evidence of purity as a condition of marriage" rather than imposing an unreasonable burden on "the great mass of men" through a eugenic marriage law.⁹³

The reason these justices opposed examining women for syphilis—either because they believed women were inherently pure or because they thought the law as a whole was

⁸⁹ "Creepin' up on her behind," of course, has a much more menacing and sexual tone than the verse about the man whom the police officer is "campin' on this trail" of. "Eugene" also uses the word "flirty" to invoke the stereotype of the promiscuous lower class woman whom he and many others believed should be tested. See Hughes, "Wisconsin 'Eugenic' Marriage Law," 217.

⁹⁰ *Peterson v. Widule*, 157 Wis. 641 (1914), 648.

⁹¹ C. A. Harper, *Twenty-Sixth Report of the State Board of Health of Wisconsin* (Madison: Democrat Printing, 1917), 103.

⁹² *Peterson v. Widule*, 157 Wis. 641 (1914), 668.

⁹³ *Peterson v. Widule*, 157 Wis. 641 (1914), 660.

ineffective—may not have been strictly related to constitutionality. Marriage scholar Frederick Hall pointed out that many places in Wisconsin had no practicing female physicians and that legislators felt “an instinctive aversion” to subjecting women to examinations by men.⁹⁴ When one doctor so much as expressed the opinion that women ought to undergo examinations, an attorney fired back, “Why not try it upon the dog first?” Asking a “pure, innocent woman” to suffer through such an examination was an insult.⁹⁵ Another newspaper jokingly suggested that exempting women from examinations allowed “thoroughbred” fathers, “hand-picked, tested, inspected, judged and distinctly labeled as strictly eugenic by the great state of Wisconsin,” to blame any immoral tendencies in their children on the untested mother.⁹⁶ Ultimately, women escaped these physical examinations because of the gender stereotypes that pervaded the male-dominated medical and political fields. Only in public newspapers was it appropriate for women to be subject to the intense scrutiny of men.

Just as they disagreed on what the law did, the justices also had different opinions on whether the law was a valid use of police power. Winslow insisted that the state’s power to regulate marriage, including between syphilitics, “must on principle be regarded as undeniable.” Yet awarding the state broad regulatory powers regarding marriage was far from a fixed rule. In fact, Winslow followed this sentence by saying, “To state this proposition is to establish it,” suggesting that he may have been referring to a moral principle rather than any judicial precedent.⁹⁷ Conversely, Marshall argued that regulating marriage rights “is necessarily limited to safeguarding those rights,” not impairing them.⁹⁸ Because requiring health certificates, in

⁹⁴ Hall, *Medical Certification for Marriage*, 52.

⁹⁵ “How to Evade the New Eugenic Law; Marry by Contract,” 12.

⁹⁶ “Eugenics Hard on the ‘Wimmen,’” *Racine Journal News*, January 7, 1914, 6. Newspaper Archive (306829747).

⁹⁷ *Peterson v. Widule*, 157 Wis. 641 (1914), 647.

⁹⁸ *Peterson v. Widule*, 157 Wis. 641 (1914), 657.

many cases, equated to taking away the marriage right, he believed the eugenic marriage law went beyond the state's purview to regulate marriage. The justification for such a law was especially questionable because the risk of transmission often presented "less than danger from any one of several infirmities which lawmakers would not venture to set up as a prevention of marriage."⁹⁹ Timlin again took a middling approach, conceding that the legislature must answer to the electors, not the court, "for the enactment of laws which, however unwise and absurd, are still within the constitutional power of the legislature."¹⁰⁰ He, however, made a point of calling the law "as silly and obnoxious a piece of legislation as could be devised," making it clear that although he did not believe courts could strike down the law, he certainly did not endorse it.¹⁰¹ In some ways, his concurrence attacked the law more than Marshall's dissent; whereas Marshall saw the legislation as "well-meant suggestions of volunteer social reformers," Timlin accused the legislators of "folly," passing the law "in a modern spirit of legislating first and investigating afterwards."¹⁰²

The primary reason Timlin and many physicians opposed the law involved the premise of the case: the Wassermann test. Although it allowed physicians to test for syphilis more accurately than they could less than a decade earlier, the Wassermann test had several flaws that cast doubt on its ability to fairly seal couples' fates. As a relatively new and expensive technique, it simply wasn't available to the average citizen.¹⁰³ Judge Eschweiler found that only 25 out of 3,000 doctors in Wisconsin, and six out of 300 in Milwaukee, had the training and equipment to

⁹⁹ *Peterson v. Widule*, 157 Wis. 641 (1914), 658.

¹⁰⁰ *Peterson v. Widule*, 157 Wis. 641 (1914), 670.

¹⁰¹ *Peterson v. Widule*, 157 Wis. 641 (1914), 669.

¹⁰² *Peterson v. Widule*, 157 Wis. 641 (1914), 660-66; *Peterson v. Widule*, 157 Wis. 641 (1914), 669.

¹⁰³ The Wisconsin Psychiatric Institute did not begin offering its free Wassermann service until July 1, 1915. This service ostensibly could have made the Wassermann test widely available and alleviated the concerns about unfair examinations; however, as is discussed later, that was not the case.

perform the test.¹⁰⁴ Even those who had the expertise and equipment debated over what the phrase “recognized clinical and laboratory tests” actually meant. One well-known Milwaukee physician claimed a safe examination would require “at least four Wassermann tests extending over a period of over four months” and a Noguchi test, after which the physician would be required to “puncture the spinal cord, draw out some of the spinal fluid and make a Wassermann test of that.” Should those tests come back negative, the physician would then be “obliged to make a hole in the skull of the applicant, remove a portion of his brain, smear it upon a glass slide, stain it and examine it microscopically for the *trepanoma pallida*,” a process that would take “at least six months.”¹⁰⁵

Although this description is undoubtedly an exaggerated version of the process, using a Wassermann test was a lengthy and costly ordeal. The *Racine Journal News* noted that physicians all over the state believed the process would take months to complete and could not be made for less than \$10—about \$243 in today’s currency.¹⁰⁶ This delay was especially problematic when the bride was already pregnant, more so because a pregnant bride clearly had already been exposed to her would-be husband’s disease and, for better or worse, no longer needed the state’s protection. Additionally, because doctors were being forced to perform expensive tests for a mere \$3 fee, Dr. Hugh Cabot argued that the law “single[d] out the physician for another special form of taxation.”¹⁰⁷ This inadequate fee, in turn, led busy practitioners to turn away prospective clients, sending them into the hands of less qualified men—sincere ones who simply could not afford to make the necessary tests as well as quacks who exploited clients. An anonymous physician suspected that “no one who desires to marry has

¹⁰⁴ *Peterson v. Widule*, 157 Wis. 641 (1914), 644.

¹⁰⁵ “Eugenic Wedding Test Impossible,” *Racine Journal News*, December 17, 1913, 1. Newspaper Archive (306846532).

¹⁰⁶ “The Eugenic Marriage Law Again,” 8; US Inflation Calculator.

¹⁰⁷ Cabot, “Syphilis and Society,” 355.

difficulty in securing the necessary certificate, regardless of his physical condition.”¹⁰⁸ As a result, Cabot concluded, “the State of Wisconsin has, through its legislature, backed by its attorney general, with the sanction of its public health officer, engaged in the business of licensing the marriage of syphilitics.”¹⁰⁹

When considering these flaws, the justices based their cases on contradictory facts, undermining the credibility of their argument. Winslow started off by saying, “Now, it must, of course, be assumed that the legislature had general knowledge of the delicacy, difficulty, and expensiveness of the Wassermann test, as well as of the fact that very few of the general practitioners of the State could make it.”¹¹⁰ In contrast, Timlin asserts, “The legislators probably never heard of the Wassermann test.”¹¹¹ Timlin’s account seems closer to the truth, since several sources suggest that the legislature did not solicit advice from the medical profession. The State Medical Society reported that none of their members, “charged with the responsibility of keeping track of questions of health and sanitation measures,” had reviewed the law. An editorial from the *Wisconsin Medical Journal* more bluntly contended that the law was passed “without anything even remotely resembling consultation with the medical profession” and that “probably 98 per cent of the physicians in Wisconsin had never heard of the bill until it... was about to go into effect.”¹¹²

Winslow’s argument was based on this likely incorrect assumption that the legislature was aware of the Wassermann test’s flaws. With this assumption, he concluded that because “the legislature wished to reach practical and possible results,” they therefore must not have intended

¹⁰⁸ Hall, *Medical Certification for Marriage*, 46.

¹⁰⁹ Cabot, “Syphilis and Society,” 355-356.

¹¹⁰ *Peterson v. Widule*, 157 Wis. 641 (1914), 651.

¹¹¹ *Peterson v. Widule*, 157 Wis. 641 (1914), 664.

¹¹² Hall, *Medical Certification for Marriage*, 14.

for the test to be required.¹¹³ Like Attorney General Owen, he believed in giving an “ambiguous” law a “construction which will save it from condemnation and accomplish the legislative purpose... in preference to a construction which makes it unconstitutional.”¹¹⁴ He claimed that “even contradiction in language [of the law would] not hinder the court from giving effect to that purpose.”¹¹⁵ By encouraging physicians to use any available means to achieve the law’s purpose, Winslow indirectly sanctioned the use of discriminatory methods that relied on class, ethnicity, and race rather than blood tests.

Timlin, on the other hand, believed that the words “scientific search” in the law were chosen specifically “to require something more than a mere physical inspection of the person.”¹¹⁶ He also believed that the lawmakers hadn’t intended to require an expensive and uncertain test that was only available to a few physicians. Yet he did not offer any alternatives as to what a well-known, established, and accepted test would be—likely because the Wassermann was the only reliable test at this time. Rather than using this fact as grounds to find the law unconstitutional, Timlin, like Winslow, wrote, “The law requires us to find the statute constitutional if by any reasonable interpretation it can be made to conform to the constitution and not to search after something which would tend to make the statute invalid.”¹¹⁷ He made no further attempt to reconcile how holding physicians to a standard that didn’t exist was a reasonable interpretation, nor did he return to the question of how this standard would be enforced. This absence, despite Timlin’s assurances that the law required more than a physical search, gave physicians the discretion to apply whatever standard they believed best fulfilled the law’s purpose.

¹¹³ *Peterson v. Widule*, 157 Wis. 641 (1914), 655.

¹¹⁴ *Peterson v. Widule*, 157 Wis. 641 (1914), 647.

¹¹⁵ *Peterson v. Widule*, 157 Wis. 641 (1914), 650.

¹¹⁶ *Peterson v. Widule*, 157 Wis. 641 (1914), 665.

¹¹⁷ *Peterson v. Widule*, 157 Wis. 641 (1914), 665.

In fact, the justices who upheld the law refused to address a number of controversial points about the law. Their silence on these points is notable because of how they drew attention to it. Rather than brushing over the criticisms, they actively pointed out problems with the law, then refused to pass judgment on them. Winslow, after acknowledging that the fee was too meager, merely said he “should not, however, feel justified in holding the law unconstitutional on this ground” without explaining why. He also admitted that the penalty for falsely issuing a license may be “extreme,” but he “[did] not feel required to pass on that question in this case,” again without providing an explanation.¹¹⁸ Likewise, Timlin remarked that the physician age requirement was likely “invalid” but insisted he was “in no position to raise this question”—a statement that makes one wonder who was in a position to question the constitutionality of a law’s aspect, if not a state supreme court justice.¹¹⁹ Not engaging with these problems did not necessarily delegitimize the law itself, but it may have encouraged physicians to enforce the problematic components, such as the fee, with more flexibility. After all, if even the state supreme court found portions of the law suspect, it was easy to justify ignoring these parts of the law. This flexibility, of course, benefited the doctor and made it more difficult for certain patients to secure certificates.

Winslow even went out of his way to point out how controversial the law was by insisting that it “was very thoroughly debated in both houses, met strenuous opposition, [and] was the subject of numerous amendments.” Rather than undermining his argument, presenting the law as controversial allowed him to be “quite certain that the provisions of the bill must have been well understood” by the legislators.¹²⁰ Again, this assumption may not have actually been true. In February 1914, Harper, the state health officer, gave a different account, claiming that

¹¹⁸ *Peterson v. Widule*, 157 Wis. 641 (1914), 656.

¹¹⁹ *Peterson v. Widule*, 157 Wis. 641 (1914), 671.

¹²⁰ *Peterson v. Widule*, 157 Wis. 641 (1914), 651.

“the vote of the members of the legislature was almost unanimous in favor of the measure.”¹²¹

Their seemingly contradictory statements both have some aspects of truth: the senate (but not the assembly) did pass the law without a roll call, and the amendment concerning the examination of women was debated thoroughly and only rejected by a margin of 40-21. Essentially, these two prominent government officials, both of whom supported the law, spun two different narratives to fit their needs. Harper needed to present the lawmakers as a united front to garner support of the law, and Winslow needed to show that the lawmakers had considered all aspects of the law in order to prove that the law should be upheld in spite of its seeming flaws. Disseminating both narratives, however, sent mixed messages to the public.

The contradictions, assumptions, and silences in *Peterson v. Widule* reveal the difficulty the government had in articulating and defending its own law. The decision removed one aspect that would have made the law unenforceable and unconstitutional and instead opened the door to unrestricted practices, some of which may have been unconstitutional themselves. With the court-sanctioned mandate of preventing degeneracy and protecting female purity, physicians took it upon themselves to find new and often controversial ways to enforce the law.

¹²¹ Cabot, “Syphilis and Society,” 354.

Part Three: The Law in Practice

Despite their impassioned speeches about the dangers of venereal diseases, when it came to implementing the eugenic marriage law, many physicians were selectively lax in their examinations. Unmotivated or unequipped to give accurate results, physicians often “[made] a bluff” of giving a thorough examination” while actually giving the patient a scant lookover.¹²² These examinations became a national joke when one bridegroom who had been given a certificate of health was revealed to be a woman.¹²³ Dr. W. J. Scollard, who had known “Ralph Kerwinieo” for years, had clearly not bothered to inspect the very place where the disease would manifest itself.

Inexplicably, some doctors did not believe these slight examinations undermined the law. One wrote, “Very few applicants realized the inadequacy of the examination, and I think the law has done a great deal of good.”¹²⁴ Likely, he meant that the law raised awareness about venereal disease even if it couldn’t effectively combat it. Cabot argued that this attitude gave rise “to a false sense of security, protect[ing] the unscrupulous, penaliz[ing] the honest, and deceiv[ing] the community in general by which can only be described properly as fake certificates.”¹²⁵ Indeed, one doctor went on record, asking, “Why should we let those \$3 fees go? Why not take them, make mere physical examinations, and issue the certificates, until the people find that they are no good?”¹²⁶ In this way, the law sometimes facilitated the spread of syphilis rather than preventing it.

¹²² Hall, *Medical Certification for Marriage*, 34.

¹²³ Cora Anderson, frustrated at the low wages she earned as woman, masqueraded as Ralph Kerwinieo for nearly a decade before becoming engaged to Dorothy Klenowski. She explained, “I came to love Miss Klenowski as only a man can and I was infatuated with her. I was calloused and hardened and I took my adopted sex’s view of life utterly and without question. My woman’s soul had died and the man’s had taken its place without any abrupt change.” See “Will Not Prosecute Man-Girl,” *Sheboygan Press*, May 6, 1914, 1. Newspaper Archive (8624290).

¹²⁴ Hall, *Medical Certification for Marriage*, 45.

¹²⁵ Cabot, “Syphilis and Society,” 357-358.

¹²⁶ “Racine Doctors Refuse to Examine Eugenic Grooms,” 7.

When Frederick Hall conducted an anonymous survey of physicians in 1921, 242 out of 1,027, or 23.6%, admitted that they did not always physically examine patients when signing health certificates.¹²⁷ Moreover, according to the Wisconsin Conference of Social Work, 23 out of 57 newly married men reported that no physical examination was given.¹²⁸ One anonymous physician explained, “We used to charge \$2.00 [for the exam]; then the county clerk and some doctor would go ‘fifty-fifty,’ and we had but a few applications; so now we do it for nothing, but you can judge how much of an examination they get. *These are facts.*”¹²⁹ The fact that almost one-fourth of physicians would admit to not giving physical examinations, even anonymously, hints at the scale of the misconduct. Of course, these flawed examinations did not necessarily mean that it was easy for men to acquire health certificates. Rather, it disproportionately favored one subset of men (the white upper classes), while others (lower classes, immigrants, and racial minorities) felt the full brunt of the law. For them, the eugenic marriage law acted as an impediment to marriage rather than a shield against venereal disease.

Failing the examination was more than a temporary setback. Eugenicist Prince Morrow wrote, “Many physicians do not believe in the curability of syphilis; they hold to the dogma that a man once syphilitic is always syphilitic, and with an inflexible logic conclude that a syphilitic man should never marry.”¹³⁰ Following the law’s passage, Dr. W. S. Haven declared, “Syphilis is never cured permanently. The victim will always have it in his system.”¹³¹ German physician Albert Neisser, favorably quoted in the Wisconsin State Board of Health’s annual report, believed this so firmly that he advocated for sending syphilitic men to the frontline trenches

¹²⁷ Hall, *Medical Certification for Marriage*, 26.

¹²⁸ Hall, *Medical Certification for Marriage*, 29.

¹²⁹ Hall, *Medical Certification for Marriage*, 22.

¹³⁰ Morrow, *Social Diseases and Marriage*, 187.

¹³¹ “Talks on Eugenics,” 3.

rather than hospitals.¹³² Failing the test once, therefore, could permanently prevent a man from marrying unless he relocated to a new town and started with a clean slate. If he sought treatment instead, his options were limited and costly. Wisconsin law forbade druggists from giving, selling, prescribing, or recommending “any drugs, medicine, or other substances to be used for the cure or alleviation of syphilis, gonorrheal infection, or chancroid.”¹³³ Only licensed physicians were permitted to treat venereal disease. Although the Bureau of Venereal Diseases offered free treatment for anyone unable to pay a physician, a social worker decided who was entitled to free treatment based on a “careful investigation into the salary, size of family, [and] living conditions” of the applicant.¹³⁴ Patients who were denied this aid often turned to the advertisements that lined the daily newspapers, which promised fake remedies for “Bad Blood.”¹³⁵ “Journals of the better class,” according to Vedder, had “for some time closed their pages to such advertising,” suggesting this problem uniquely targeted the poor.¹³⁶

Since its discovery in 1909, the standard treatment for syphilis was Salvarsan (arsphenamine), an arsenic compound that killed the diseased organism.¹³⁷ It was more of a lesser evil than a cure, given its toxicity. In her 1937 thesis, Mary Laack Oliver recounted, “During the World War [the Germans] would allow no exportation of [Salvarsan] to the Allies, counting the unrestricting spread of syphilis among the enemy as their greatest single aid toward

¹³² C. A. Harper, *Twenty-Eighth Report of the State Board of Health of Wisconsin* (Madison: Homestead Company, 1920), 147.

¹³³ Jason Waterman and William Fowler, *State Laws and Regulations Pertaining to Public Health 1918* (Washington: Government Printing Office, 1920), 391.

¹³⁴ Harper, *Twenty-Eighth Report*, 155.

¹³⁵ Bad Blood was a euphemism for syphilis, most infamously applied during the Tuskegee Syphilis Experiment. This particular advertisement alleged that Hood’s Sarsaparilla “corrects” bad blood and “makes pure blood.” The eugenic connotations were likely not lost on the Progressive reader. See “Bad Blood,” *La Crosse Tribune*, January 10, 1914, 5. Newspaper Archive (307126382).

¹³⁶ Vedder, *Syphilis and Public Health*, 242.

¹³⁷ Brandt, “AIDS in Historical Perspective,” 370.

victory.”¹³⁸ If Salvarsan was as scarce as she suggests, men who did not pass the test during the first four years of the law would have had a much more difficult time getting treatment and, consequently, getting married. Even if patients had access to the drug, physicians did not have a standard for declaring a patient cured. Lieutenant-Colonel Vedder suggested a “rather severe” but “very good” process used by the U.S. Army: “One year without treatment, without any suspicious clinical signs, with several negative Wassermann reactions and no positive ones, and with a negative provocative Wassermann reaction and luetin test at the end of the year.”¹³⁹ He then admitted, “If our army experience is any indication of conditions in civil practice it seems probable that very few men will be able to fulfil [sic] these conditions.”¹⁴⁰ As a result, even men dutifully undergoing the toxic treatment process could have to postpone their marriage for years. It is no wonder physicians feared that men, when faced with this delay, would resort to fraud to obtain a certificate.

On their end, the Wisconsin State Legislature did everything in its power to ensure the law was being carried out to the fullest extent. Following the passage of the law, the number of common law marriages, which did not require marriage licenses, rose drastically from zero prior to 1914 to 87 in the law’s first year.¹⁴¹ The State Bureau of Vital Statistics attributed the “comparatively large number of these marriages” to the eugenic marriage law.¹⁴² Senator Otto Bosshard of La Crosse denounced these contracts as “marriages that do not conform with the

¹³⁸ Oliver, “Eugenic Marriage Laws of the Forty-Eight States,” 48.

¹³⁹ Vedder, *Syphilis and Public Health*, 207.

¹⁴⁰ Vedder, *Syphilis and Public Health*, 208.

¹⁴¹ In a common law marriage, the couple resides together and declares themselves to be married but never undergoes a formal marriage ceremony or receives a marriage license. Most states, including Wisconsin, no longer recognize common law marriages.

¹⁴² “Few Common Law Marriages,” *Daily Leader Grand Rapids Wisconsin*, March 24, 1917, 4. Newspaper Archive (94434855).

conventions of civilized society.”¹⁴³ Accordingly, the legislature passed the uniform marriage law in 1917, which stated that “any one wishing to be married by common law after Jan. 1. 1918, must first take out a marriage license [and] file the marriage contract with the local registrar of the town, village, or city.”¹⁴⁴ Following this restriction, the Bureau of Vital Statistics reported no common law marriages for 1918.¹⁴⁵ Notably, Wisconsin was the only state, as of 1919, that held “no marriage [was] valid unless a license for it [had] been issued, actually or constructively, as prescribed by law.”¹⁴⁶ It also held the honor of having the shortest period, at 30 days, from when the license was issued and to when it became invalid. In contrast, in “all but a very few states,” the license, once issued, was good “at any future time for the marriage of the parties.”¹⁴⁷ These additional restrictions bolstered the eugenic marriage law and made it even more difficult for those without health certificates to evade the law.

For these reasons, studying how the examinations were conducted is crucial because it often determined whether the patient received a signed health certificate. Following the *Peterson v. Widule* ruling, examinations generally fell into one of two categories: oral or physical. One physician described what he believed to be a typical examination, saying the patients “have a good laugh, tell a story or two, and the doctor signs the certificate without even looking at the patient’s tongue, much less making a decent physical and serological examination.”¹⁴⁸ These oral examinations, despite their relative prevalence, were often derided as careless jokes. W. F. Lorenz, the director of the Wisconsin Psychiatric Institute, reported that only 36% of those who tested positive admitted to being infected in their oral exam, while 63% “denied infection until

¹⁴³ “New Marriage Law Urged by Bosshard,” *La Crosse Tribune*, March 19, 1915, 11. Newspaper Archive (53061815).

¹⁴⁴ “Must Take Out License,” *Grand Rapids Tribune*, October 25, 1917. Newspaper Archive (53889659).

¹⁴⁵ Harper, *Twenty-Eighth Report*, 216.

¹⁴⁶ Fred S. Hall and Elisabeth W. Brooke, *American Marriage Laws in Their Social Aspects: A Digest* (New York: Russell Sage Foundation, 1919), 34.

¹⁴⁷ Hall and Brooke, *American Marriage Laws in Their Social Aspects*, 39.

¹⁴⁸ Hall, *Medical Certification for Marriage*, 47.

confronted with a positive Laboratory report when many recalled having had an infection of which they thought themselves cured.” He continues,

That is the point I wish to emphasize, they thought themselves cured. No visual evidence of their disease existed. They were in apparently good health... To rely upon the absence of clinical evidence as a criterion of cure is today almost criminal negligence.¹⁴⁹

In short, oral examinations were known to be an ineffective means of diagnosing syphilis. Despite this fact, physicians persisted in using them. The most common deciding factor seemed to be character. Patients whom the physician personally knew or who were known to be upstanding citizens were expected to give honest answers in oral examinations and could get a certificate merely by saying they didn’t have venereal disease. Strangers and patients suspected of immoral conduct, however, were subjected to physical exams. “In my practice there isn’t much chance of not knowing who need the tests,” Physician 1018 from Hall’s survey wrote. “With people of character and those whom I know their word goes.” Another physician insisted he was “acquainted with the moral conduct of everybody” and therefore knew when to examine and when not.¹⁵⁰ By selectively decreasing the rigor of the exam, physicians used the law to make perceived moral conduct a prerequisite for marriage in many cases. Charles H. Nims, a doctor from Oshkosh, stated, “The average physician can tell at once by the conduct of an applicant whether he is entitled to a health certificate,” suggesting that physicians made decisions based on perceived moral conduct rather than physical health.¹⁵¹

Perhaps the most damning fact about the examinations is that all physicians had access to a state-run laboratory that would perform the Wassermann test for free. On July 1, 1915, the Wisconsin Psychiatric Institute began offering a free Wassermann service through which any

¹⁴⁹ Lorenz, “Examination of Blood for Syphilis,” 50.

¹⁵⁰ Hall, *Medical Certification for Marriage*, 32.

¹⁵¹ “Doctors On Stand In the Vice Probe,” 2.

practicing physicians could apply for a test “on behalf of a citizen of Wisconsin.”¹⁵² Notably, the Institute did not specify whether “citizen” meant any person residing in Wisconsin or any person in Wisconsin with citizenship status, which would have excluded immigrants. Regardless, few took advantage of this opportunity. Less than 5% of the total Wassermann tests made at the Psychiatric Institute were requested for the sake of medical certification for marriage. Physicians were clearly aware that the service existed since 65% of active practitioners in Wisconsin used it extensively in their general practice.¹⁵³ Rather, they chose not to use it, instead relying on indirect metrics such as moral conduct and racial stereotypes.

One of these indirect metrics was economic status. While some physicians saw the law as “a chance to make \$2.00 in a half criminal way,” others increased the fee, creating more of a burden for the lower classes.¹⁵⁴ Out of 169 physicians who responded to Hall’s survey about the fee, 155 believed it to be inadequate, and 33 reported that they sometimes or always charged more than the required fee.¹⁵⁵ Three of these admitted to charging \$5, one \$7, two \$8, and one \$10.¹⁵⁶ To put that in perspective, raising the fee from \$3 to \$10 would be as if a modern doctor charged \$243 for a \$73 service.¹⁵⁷ In Chippewa Falls, doctors refused to furnish the certificate for less than \$8, and in Dane County, they also insisted on charging a higher fee.¹⁵⁸ In both cases, lawyers intervened by drawing up common law marriage contracts for \$3.50 and \$0.10, respectively; however, the legislature quickly closed that recourse by banning common law marriages. In other instances, doctors pocketed the required fee “for [their] trouble” and

¹⁵² Lorenz, “Examination of Blood for Syphilis,” 54.

¹⁵³ Hall, *Medical Certification for Marriage*, 38.

¹⁵⁴ The revised 1915 law had lowered the maximum required fee from \$3 to \$2. See Hall, *Medical Certification for Marriage*, 49.

¹⁵⁵ Hall, *Medical Certification for Marriage*, 27.

¹⁵⁶ Hall, *Medical Certification for Marriage*, 37.

¹⁵⁷ US Inflation Calculator.

¹⁵⁸ “Helping the Lawyers,” *Eau Claire Leader*, February 5, 1914, 4. Newspaper Archive (95741097); “Register of Deeds of Dane County Would Solve Eugenic Law Trouble,” *Janesville Daily Gazette*, January 8, 1914, 1. Newspaper Archive (52822885).

demanded the patient pay for an additional laboratory test in spite of the *Peterson v. Widule* ruling and the Psychiatric Institute's offer to perform free tests.¹⁵⁹

Naturally, physicians wanted to recoup costs from what they perceived to be an unfair law. Although imposing these extra fees may have been in their own best interest, some of their comments suggest they were also using the law to create an economic barrier to entry on marriage. Dr. Haven stated that "it would have been better for the state to ask that every prospective bridegroom have \$300 in his possession and every prospective bride, \$100."¹⁶⁰ In doing so, he equated a law that was supposed to be about health to one about wealth, implying there was a connection between the two. Likewise, Dr. S. C. Sorenson said, "Another thing that I have against the law is that it requires the county physicians to examine the indigent free. Does the county want it [sic] paupers to marry? I believe not."¹⁶¹

Upper class men, if they did fall under suspicion, paid the inflated fees and devised schemes to get around the law. American writer Elbert Hubbard suggested that every prospective bridegroom take out a life insurance policy for \$1,000 and provide "a neat sum for the protection of the widow and orphans, should the eugenic bridegroom, 'shuffle off.'"¹⁶² One thousand dollars—the equivalent of around \$25,000 today—was of course an unthinkable amount to all but the most wealthy Americans, yet the *Racine Journal News* praised the idea as "a good one [that] possibly the new state insurance company might work... to advantage."¹⁶³ Although it is unknown whether anyone followed through with this arrangement, the fact that it was taken seriously reveals the inherent class bias in the enforcement of the law.

¹⁵⁹ "Racine Doctors Refuse to Examine Eugenic Grooms," 1.

¹⁶⁰ "Racine Doctors Refuse to Examine Eugenic Grooms," 1.

¹⁶¹ "Racine Doctors Refuse to Examine Eugenic Grooms," 1.

¹⁶² "'Fra Elbertus' on Eugenics," *Racine Journal News*, January 26, 1914, 6. Newspaper Archive (54412390).

¹⁶³ US Inflation Calculator; "'Life' on Eugenic Law," *Racine Journal News*, January 30, 1914, 7. Newspaper Archive (306830000).

Physicians were more reluctant to grant health certificates to lower class men because poverty was associated with sexual indulgence and therefore disease. In 1920, Dr. Loyd Thompson, a physician for the syphilis clinic in Arkansas's Government Free Bathhouse, wrote, "those low in the social scale are more prone to indulge in sexual excesses, owing to the conditions of housing, etc. than those of high degree, and further, they do not as often employ prophylactic measures, so contact syphilis more frequently."¹⁶⁴ As per the Victorian Compromise, it is possible lower class men were merely less able to hide their disease than their upper class counterparts. Surgeon Jonathan Hutchinson offered a more sympathetic take, pointing out that "although, in fear of syphilis, a surgeon may forbid marriage he cannot enforce continence. In most cases the risk... is simply shifted from a wife to a concubine, from one of the richer classes, it may be, to one of the poorer."¹⁶⁵ As such, the law may have perpetuated the stereotype of the syphilitic pauper in more than one way.

This stereotype also intersected with nationality. Brandt explains that Progressive Americans constructed venereal disease as "a disease of the 'other,' be it the other race, the other class, the other ethnic group." Many, like Dr. Howard Kelly, blamed the rise of venereal disease on the "incessant impouring of a large foreign population with lower ideals."¹⁶⁶ Notably, their ideals are presented as being responsible for their diseased state. By tying the disease to a character flaw, venereal disease could be viewed as an individual failing rather than a societal problem, which would have gone against the Victorian Compromise. Physicians took these stereotypes into account when conducting examinations. "It has been brought to my notice," Dr. W. Travis Gibb remarked, "many times among certain classes, especially ignorant Italians, Chinese, and Negroes, it is an accepted belief that, if a man infected with an obstinate venereal

¹⁶⁴ Loyd Oscar Thompson, *Syphilis* (Philadelphia and New York: Lea & Febiger, 1920), 53-54.

¹⁶⁵ Vedder, *Syphilis and Public Health*, 205.

¹⁶⁶ Brandt, *No Magic Bullet*, 23.

disease have intercourse with a virgin the latter will develop disease and he will be cured.”¹⁶⁷

Myths like these were particularly harmful in the context of the eugenic marriage law, whose primary aim was to protect female purity. Because moral conduct was an important factor in examinations, these people, stereotyped as morally corrupt, fell under greater suspicion.

With these nativist beliefs, the law’s eugenic component came into play. Dr. Haven claimed that the law “was amiss only in the respect that it only referred to venereal diseases gonorrhea and syphilis and did not concern one’s whole pedigree.”¹⁶⁸ He did not specify what kind of pedigree should be required for marriage, but the implication is that marriage should be reserved for the white native upper classes, who were too respectable to contract syphilis. Even Hall, when analyzing the likelihood of physician fraud, went out of his way to mention that the physician who signed the greatest number of certificates had a “name [that] indicated foreign nationality or parentage, and [an] office [that] was in a foreign section of the city.”¹⁶⁹ Although he ultimately acquitted the man of wrongdoing, including this information implies that non-native citizens were viewed as inherently untrustworthy. Because trust between the doctor and patient largely determined how an examination was conducted, this attitude placed a greater burden on immigrants.

In fact, the Wisconsin State Board of Health took measures to prevent the lower classes from marrying and spreading their alleged diseases. In 1919, the board issued a set of rules governing the prevention of venereal disease. Rule 9 stated, “No physician shall issue a certificate of freedom from venereal disease to vagrants, prostitutes, keepers, inmates, employes [sic], or frequenters of houses of ill-fame.”¹⁷⁰ Of course, without a health certificate, none of

¹⁶⁷ Brandt, *No Magic Bullet*, 20-21.

¹⁶⁸ “Talks on Eugenics,” 3.

¹⁶⁹ Hall, *Medical Certification for Marriage*, 30.

¹⁷⁰ Harper, *Twenty-Seventh Report*, 38.

these people could marry. Much like syphilitics, most of these categories could not be identified by a clear-cut test but tended to include lower class and immigrant populations. Doctors only needed to accuse someone of vagrancy or prostitution to justify their refusal to sign the certificate. Without explicitly banning marriages between these people with socially undesirable characteristics, health officials and physicians used the eugenic marriage law to ensure that they could not marry.

But perhaps the most insidious stereotype was the alleged correlation between race and venereal disease. Medical authorities presented black people, more than any other group, as inherently prone to syphilis. This stereotype was so prevalent that the “syphilitic black,” historian James Jones argues, became “the representative black.”¹⁷¹ “Syphilis is undoubtedly the greatest cause of death and disability in the negro race,” Vedder reported in 1918.¹⁷² “All who have had any extensive experience with the negro race have felt assured that the incidence of venereal diseases is much higher among them than among the white race.”¹⁷³ Physicians were especially interested in comparing white health to black health because the “peculiarities of blacks” offered what Jones calls a “pseudoscientific rationale for keeping blacks in their places.”¹⁷⁴ These comparisons also helped uphold Victorian ideals. Vedder notes, “Experience indicates that there is more venery among Latin races, among whom discussion of sex topics is more or less open, than among Anglo-Saxon races, where the sex topic is taboo and where jokes such as are freely published in *La Rire* would cause the suppression of the journal.”¹⁷⁵ By pointing out this correlation, he is implying that immodest behavior causes venereal disease, when in fact the two may not be connected.

¹⁷¹ Jones, *Bad Blood*, 28.

¹⁷² Vedder, *Syphilis and Public Health*, 101.

¹⁷³ Vedder, *Syphilis and Public Health*, 85.

¹⁷⁴ Jones, *Bad Blood*, 17.

¹⁷⁵ Vedder, *Syphilis and Public Health*, 217.

Physicians at the time used this belief that immoral behavior led to venereal disease to explain why black people contracted syphilis so often. “Morality among these people is almost a joke and is only assumed as a matter of convenience,” asserted Dr. Thomas Murrell, a lecturer on syphilis for Richmond’s University College of Medicine. Morality, of course, meant sexual restraint, as Murrell continues, “I have never seen a negro virgin over eighteen years of age.”¹⁷⁶ To back up his claims, Vedder likewise cited the “generally admitted sexual promiscuity of the majority of this race.”¹⁷⁷ Similarly, Thompson argued that “the greater prevalence of syphilis among negroes than among whites [was] not due to a greater susceptibility on the part of the negro, as has been contended, but... to the negro’s almost absolute lack of morality and cleanliness.”¹⁷⁸ To demonstrate, he told an anecdote about seeing a genital ulcer on a six-year-old black boy “who said he had had intercourse with his sister.” Repurposing the stereotype about virgins curing venereal disease, he also related a tale about a sixteen-month-old child who showed signs of syphilis and gonorrhea whose “negro nurse... gave a strongly positive Wassermann.”¹⁷⁹

Presenting black people as uncontrollably promiscuous was not only used to justify their health problems; it also allowed physicians to argue that black people needed to be controlled by white people for their own good. Murrell went so far as to blame emancipation for the rise in syphilis among black people. Calling emancipation “one of the world’s greatest tragedies,” he explained, a black slave’s “cabin was well ventilated and his clothing was warm and sufficient. The food was plentiful and nourishing and his life was one of well-regulated sobriety... by a forced system of hygiene the negro’s body, as a piece of property, was not allowed to

¹⁷⁶ Thomas W. Murrell, “Syphilis and the American Negro: A Medico-Sociologic Study,” *The Journal of the American Medical Association* 54 (1910): 847.

¹⁷⁷ Vedder, *Syphilis and Public Health*, 85.

¹⁷⁸ Thompson, *Syphilis*, 52.

¹⁷⁹ Thompson, *Syphilis*, 49.

deteriorate.”¹⁸⁰ Although these claims are patently untrue, Murrell’s harsh accusations reflected many physicians’ attitude at the time: black people were responsible for their own ruin.¹⁸¹

Murrell described the plight of a black man in 1909:

He was free, indeed—free to get drunk with cheap political whisky and to shiver in the cold because his scanty savings went to purchase flashy and flimsy garments... absolutely free to gratify his every sexual impulse; to infect and be infected with every loathsome disease... It is my honest belief that another fifty years will find an unsyphilitic negro a freak, unless some such procedure as vaccination comes to the relief of the race, and that in the hands of a compelling law.¹⁸²

Physicians also used these stereotypes to frame black people as biologically more susceptible to syphilis. Thompson theorized, “It is possible that the negro’s well-known sexual impetuosity may account for more abrasions of the sexual organs, and therefore more frequent infections than are found in the white race.”¹⁸³ Condemning black people for having less civilized sex further separated them from the respectable, non-syphilitic upper classes.

Thompson even compares black genitalia to that of a “rabbit,” an animal that is infamously portrayed as sexually ravenous.¹⁸⁴ Because physicians treated these assumptions as medical facts, black bridegrooms had a much more difficult time proving they were free of syphilis.

Presenting black people as being inherently syphilitic raises the question of just how common syphilis actually was in the black community. Although almost every writer, like Thompson, adhered to the “practical unanimity of opinion that this disease [was] far more

¹⁸⁰ Murrell, “Syphilis and the American Negro,” 846-847.

¹⁸¹ In fact, many slave owners transmitted syphilis to black women when they forced themselves on female slaves. The complete control the slavers asserted over their slaves’ sex lives was not a form of protection. It was an atrocity.

¹⁸² Dr. John A. Kenney Sr., medical director of the Tuskegee Institute and Booker T. Washington’s personal doctor, called on the medical community to refute Murrell’s claims. “There are many white physicians in the South and elsewhere who practice among our people. Will none of them in justice alone, refute these indiscriminate and damaging statements? In the meantime I am appealing to the Negro physicians to send in statistical evidence to rebut these uncharitable and easily refuted assertions.” It is unknown if any did. Physicians did, however, use Murrell’s account as evidence in their own publications. See John A. Kenney, “Syphilis and the American Negro—A Medico-Sociological Study,” *Journal of the National Medical Association* 2, no. 2 (1910), 117. For reference, see Murrell, “Syphilis and the American Negro,” 847.

¹⁸³ Thompson, *Syphilis*, 52.

¹⁸⁴ Thompson, *Syphilis*, 52.

common in the colored race than in the white,” they admitted there had been “comparatively little work of a scientific character to determine the exact incidence of syphilis in the negro.”¹⁸⁵ Not knowing this answer did not convince them to back down from their assertions, but it did prompt them to provide estimates based on available evidence. This evidence, because of the reluctance to report venereal disease, often stemmed from “personal observation.”¹⁸⁶ On the high end, Dr. S. S. Hindman, a pathologist from Georgia, believed that 95% of the black population contracted syphilis at some point in their lives.¹⁸⁷ Thompson and Vedder cited separate studies that said 75% of black patients were syphilitic.¹⁸⁸ Most estimates ranged between 50–60%, with almost none falling under 20%.

Again, reports often presented these estimates in comparison to rates among white populations. Although most studies determined that syphilis rates were much higher in black populations, a notable 1916 study of Galveston, Texas came to a more nuanced conclusion: “The occurrence of syphilis among white people of the same social class as negroes would seem to be about the same as among the negroes. In the better class of white people the occurrence is much less, while in the best classes it is almost nil.”¹⁸⁹ This intersection of race and class reveals the hierarchy physicians operated in when diagnosing syphilis. Individual white people could relegate themselves to a lower class by falling prey to the same vices as black people, but the black population as a whole was confined to the bottom of the hierarchy—or, as Murrell put it, “The average negro is all slum.”¹⁹⁰

¹⁸⁵ Thompson, *Syphilis*, 50.

¹⁸⁶ Vedder, *Syphilis and Public Health*, 86.

¹⁸⁷ Jones, *Bad Blood*, 27.

¹⁸⁸ Thompson, *Syphilis*, 50; Vedder, *Syphilis and Public Health*, 89.

¹⁸⁹ Vedder, *Syphilis and Public Health*, 90.

¹⁹⁰ Murrell, “Syphilis and the American Negro,” 848.

Although studies almost universally supported this hierarchy, rare exceptions contradicted this social construct. In 1911, Dr. John Cunningham Jr. wrote in Wisconsin's *State Board of Health Bulletin*, "It is generally believed that syphilis... is more frequent among the better class of men."¹⁹¹ That Cunningham could make such a confident claim amidst these opposing accounts suggests that some general beliefs may have been too dangerous to discuss in most publications. Such trends may not have been reflected in the statistics because most studies gathered their evidence from public hospitals, asylums, and prisons—places that disproportionately treated lower classes, who could not hire private physicians.

Physicians also found ways to insert their prejudices into these statistics. For example, Vedder listed a survey that revealed only 13.4% of black prisoners had syphilis as compared to 20.9% of the "American-born" prisoners in an Ohio penitentiary.¹⁹² "This low finding among the colored prisoners," he commented, "is remarkable and unexplained."¹⁹³ Likewise, he argued that "lower percentage in the females" in a study of black prisoners was "not to be taken seriously" owing to the small sample size.¹⁹⁴ Yet he does not comment on the sample size of a non-race-related study earlier in his book, which had the same number of participants: 63.¹⁹⁵ Vedder not only discredited surveys that contradicted the medical community's racist expectations, but also used race to explain abnormally high results. When he revealed that 42% of children in a Virginia clinic had a positive Wassermann test, he explained, "The high percentages [sic] here given may be assumed to be due to the inclusion of negroes in these statistics."¹⁹⁶ Unlike white

¹⁹¹ Cunningham, "Venereal Disease and Its Influence," 134.

¹⁹² The context makes it unclear if "American-born" includes black American prisoners or if Vedder is using the word to mean "white." If he indeed means white, his word choice suggests black Americans are un-American, implicitly comparing them to the immigrant populations that were similarly condemned for being syphilitic and morally depraved.

¹⁹³ Vedder, *Syphilis and Public Health*, 71.

¹⁹⁴ Vedder, *Syphilis and Public Health*, 90.

¹⁹⁵ Vedder, *Syphilis and Public Health*, 48.

¹⁹⁶ Vedder, *Syphilis and Public Health*, 64.

patients, who received the benefit of the doubt, black patients were assumed to be guilty unless proven innocent—and, because of Wisconsin’s law, they had to be proven innocent to marry.

Once a black man did fail the test, getting treatment was difficult because physicians saw treating them as a waste of time. Jones argues that physicians believed efforts to treat black syphilitics were “doomed to failure because blacks did not care if they caught or spread the disease.”¹⁹⁷ These depictions suggested black people’s negligence not only prolonged their own suffering but also facilitated the spread of syphilis. “[T]he negro often fails to present himself for treatment for syphilis which he considers a trifling disorder,” Vedder wrote, “and when he does consult a physician will only remain under treatment for a few days or weeks until the immediate symptoms have passed off.”¹⁹⁸ Georgia’s Dr. Henry McHatton concurred, saying, “I have yet to see one [Negro] who would continue treatment for any venereal disease... any longer than there was extreme discomfort to himself.”¹⁹⁹ Because doctors assumed black patients did not take treatment seriously, some doctors argued that they should be treated differently than white patients. Differently, of course, meant less effectively. Murrell advocated that “under no circumstances should treatment be instituted until the negro is thoroughly convinced of his having the disease,” even though delaying treatment would make the disease worse.²⁰⁰ If the doctor went ahead with treatment, he warned them to “do nothing that cause[d the black patient]

¹⁹⁷ Jones, *Bad Blood*, 25.

¹⁹⁸ In fact, Vedder lists black people’s reluctance to seek treatment as yet another reason why statistics did not adequately capture the actual prevalence of syphilis in the race. See Vedder, *Syphilis and Public Health*, 88.

¹⁹⁹ Jones, *Bad Blood*, 26.

²⁰⁰ This advice is particularly tragic in context of the Tuskegee Syphilis Experiment, in which the federal government pretended to treat 400 black men for syphilis while actually letting the disease progress uninhibited so they could study it. Consequently, dozens of black men died, became physically and mentally disabled, and infected their wives and children. For more information, see Brandt, “Racism.” For reference, see Murrell, “Syphilis and the American Negro,” 848.

pain—for instance, give hypodermic injections—as it [was] unlikely that he [would] ever show up for the second dose.”²⁰¹

In actuality, both poverty and racial prejudice prevented black patients from being treated by many physicians.²⁰² The remaining options may have been responsible for their reluctance to seek treatment because black hospitals were notoriously poor quality. “It is no surprise to me that the negro is afraid of a hospital,” admitted Dr. Lawrence Lee, a health official from Georgia. “The negro hospitals I have seen are warranted to repel and even terrify people less superstitious than the negro.”²⁰³ Murrell’s musings demonstrate the quality of care black patients could expect to receive: “Perhaps here, in conjunction with tuberculosis, will be the end of the negro problem. Disease will accomplish what man cannot do.”²⁰⁴ With the doctors rooting for the disease over the patient, it is no wonder that black people shied away from seeking treatment.

Because Wisconsin did not keep race statistics concerning marriage, it is impossible to know exactly how the eugenic marriage law impacted marriages within and between different races. Notably, the State Board of Health did keep track of race in its annual mortality statistics. Why it recorded race on death certificates but not marriage certificates is unknown. Because Wisconsin did not have an anti-miscegenation law, it is possible that not reporting race when it came to marriages was a deliberate choice so as not to draw attention to any interracial marriages. Regardless, what the records do show is that Progressive Americans thought the law did not go far enough in protecting virtuous white people from black people. After all, many people, such as Dr. Brunner, feared “beyond [a] doubt” there was a “contamination of the white

²⁰¹ Murrell, “Syphilis and the American Negro,” 848.

²⁰² Jones, *Bad Blood*, 34.

²⁰³ Jones, *Bad Blood*, 40.

²⁰⁴ Allan M. Brandt, “Racism and Research: The Case of the Tuskegee Syphilis Study,” *The Hastings Center Report* 8, no. 6 (1978): 22. JSTOR (3561468).

race by the negro race” that was “both physical and moral.”²⁰⁵ An article in the *Racine Journal News* applauded the eugenic purpose of the law but protested that it “provide[d] nothing as to the MORALLY UNDESIRABLE or morally debauched.” As an example of such behavior, it continued, “Under this law, the vilest white slaver, if he appears physically sound, may wed; but the noblest specimen of young manhood, if he be tainted with disease, is condemned to ‘single blessedness’—or cursedness.”²⁰⁶ A “white slaver” referred to the White Slave Traffic Act of 1910, which made the interstate traffic of “any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose” a federal crime.²⁰⁷ This act, however, was commonly used to convict black men who had sexual relations with white women, even if the relationship was consensual. Invoking a phrase with such racial connotations suggested that the eugenic marriage law was a failure not because it didn’t prevent syphilis, but because it didn’t prevent interracial marriages.

Others, who believed that the law was insufficient at combatting syphilis, advocated for instituting racial segregation. “Segregation, asexualization and sterilization, rather than prohibition of marriage,” Milwaukee lawyer Edward W. Spencer wrote, “are the only effective safeguards to society, so far as such persons are concerned.”²⁰⁸ During a Men’s Club meeting, Dr. J. S. Keech of Racine “came out strongly in favor of segregation,” claiming “by segregation, and segregation only, could the two dread diseases directly aimed at in this new eugenic marriage law be wiped out.” Again, his suggested improvements acted as a pseudo-anti-miscegenation law. In his words, public health came second to racial purity: “For one thing,

²⁰⁵ Jones, *Bad Blood*, 43.

²⁰⁶ “Making the Human Animal By Law,” *Racine Journal News*, December 9, 1913, 6. Newspaper Archive (306846446).

²⁰⁷ “The Scope of the White Slave Traffic Act,” *Virginia Law Review* 4, no. 8, (1917): 654. JSTOR (1063347).

²⁰⁸ Spencer, “Some Phases of Marriage Law,” 69.

[segregation] would prevent white slavery; for another, it would wipe out the venereal diseases... we will get a lot purer races when we recognize this fact.”²⁰⁹

These prejudices and stereotypes did not exist in a vacuum but rather intersected to form new stereotypes. As previously mentioned, race acted as a factor in determining class, whereas class could sometimes override white men’s racial privilege. The collision of gender with race and class resulted in a complete reversal of the stereotype that was the foundation of the law: female purity. When examining supporters’ claims about the law, a writer for the *Janesville Daily Gazette* noticed an inconsistency and wondered, “If the doctors are unable to protect the prostitute from disease how are they going to protect the wives? How can they be so powerless with one set of women and so wonderfully capable for another?”²¹⁰ The answer lies in the intersection between sex, class, and race.

Although the law purported to protect all women, its supporters only fashioned it to protect upper class white women. When the women were lower class or non-white, the gender roles reversed so that white men were the ones needing protection from the promiscuous women. Although more men contracted venereal disease than women overall, Physician 440 from Hall’s survey remarked, “In the lower classes I believe there is an equal amount of disease in each sex.”²¹¹ When it came to race, Vedder took it a step further, claiming syphilis was “even more frequent among negro women than among negro men” because “a promiscuous woman will have intercourse with a number of males much greater than the number of women with whom a promiscuous man has relations.”²¹² Dr. James McIntosh agreed. Because syphilis was “so

²⁰⁹ “How to Evade the New Eugenic Law,” 12.

²¹⁰ “Eugenic Stupidity,” 4.

²¹¹ Hall, *Medical Certification for Marriage*, 51.

²¹² Vedder, *Syphilis and Public Health*, 101; Vedder, *Syphilis and Public Health*, 34.

prevalent among the men,” he reasoned one could only “imagine what it was like among the women, who” in stark contrast to white women “had no virtue or chastity to protect them.”²¹³

These portrayals of lower class and non-white women painted them as threats to white men. Brandt explains that physicians stoked fears among the native-born middle class by calling foreign-born prostitutes the “primary locus of infection.”²¹⁴ Murrell warned, “the worn-out prostitute may be the woman you employ as your maid to-morrow.”²¹⁵ As such, medical experts depicted black women as diseased seductresses. African women, Vedder asserted, “whether married or single, practically all have intercourse with the whites.”²¹⁶ Murrell lamented, “The negro woman who believes every man of the white race a candidate for her charms... is not the same woman that the Southern child revered and loved to call ‘mammy.’”²¹⁷ In this case, he was right; the stereotypes had changed with the times, but they remained noxious attempts by white men to control black women.

With these stereotypes, the medical community offered up lower classes, immigrants, and black people as the face of syphilis. In this way, the eugenic marriage law finally lived up to its name. Barring syphilitics from marrying, if the medical journals are to be believed, was equivalent to barring the eugenically inferior foreigners, blacks, and poor whites. How often physicians adhered to these stereotypes in practice is another story. Whether their desire for the fee or disdain for the law overcame these biases, the fact remains that this discourse helped sustain the Victorian social code, where the virtue of the respectable white classes made them immune to disease—at least in public. Meanwhile, because of the poor living conditions and

²¹³ Jones, *Bad Blood*, 25.

²¹⁴ Brandt, *No Magic Bullet*, 21.

²¹⁵ Murrell, “Syphilis and the American Negro,” 847.

²¹⁶ Vedder, *Syphilis and Public Health*, 34.

²¹⁷ Murrell, “Syphilis and the American Negro,” 848.

limited access to healthcare, the classist and racist stereotypes sometimes became a self-fulfilling prophecy among poor, non-white communities.

Part Four: The Law in Legacy

In 1981, the Wisconsin State Legislature repealed the eugenic marriage law. The repeal, buried in the 533-page budget bill, was conducted without fanfare, decades after the fervent calls for it had died down. As Hall explained back in 1925, the refusal of the legislature to repeal the law “cannot be explained on the ground of indifference to a dead letter law, for its provisions [were] directly felt each year by a large number of men— by all, that is, who appl[ied] for licenses to marry.”²¹⁸ The timing of the repeal is especially puzzling because it came at a time where another stigmatized sexually transmitted disease was beginning to incite panic in the American public: AIDS.

Although a non-event in Wisconsin, the repeal was part of a national trend starting in the 1980s wherein states removed their pre-marital blood test requirements. With the emergence of penicillin in the 1940s, cases of syphilis had dropped 90% between 1946 and 1955. As of 1976, 116,000 premarital venereal examinations in a New York City study only uncovered 39 new cases of syphilis at the cost of \$60,000 per case.²¹⁹ Another California study projected that premarital screening cost \$240,000 per case.²²⁰ Spending over \$80 million nationwide to reveal 456 cases was no longer seen as a cost-effective way of combatting the disease, especially because these tests continued to spew a consistent stream of false positives despite technological advances.²²¹

Some scholars also questioned the constitutionality of premarital venereal disease testing following Supreme Court rulings in the second half of the century that expanded on the right to marry. In *Skinner v. Oklahoma* (1942), the Court declared that marriage was “one of the ‘basic

²¹⁸ Hall, *Medical Certification for Marriage*, 50.

²¹⁹ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 7-8.

²²⁰ Brandt, “AIDS in Historical Perspective,” 369.

²²¹ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 8.

civil rights of man,”” and in *Zablocki v. Redhail* (1978), it held, for the first time, that “statutes significantly interfering with the decision to marry required a high degree of justification to withstand constitutional scrutiny.”²²² Under this new scrutiny, which is “more searching than the Supreme Court’s traditional, deferential review of public health statutes,” legal associate Robert D. Goodman speculates, “it is not clear that the testing could be upheld.”²²³ Since the law’s passage, social norms had changed such that premarital syphilis examinations may no longer have been closely tailored to the goal of syphilis prevention. Couples in the 1980s were “likely to have engaged in a significant period of sexual intimacy before marriage,” a practice that is “radically discordant with the view of sexual conduct that motivated and justified the earlier venereal disease testing statutes.”²²⁴ As a result, syphilis tests fell out of favor. In 1980, 34 states required blood tests to receive a marriage license; today, only Montana retains this type of law.²²⁵

In the nearly seven decades Wisconsin’s eugenic marriage law was in effect, it did not, as some promised, allow Wisconsin to “boast of a ‘pure race.’”²²⁶ The State Board of Health’s records show the cases of syphilis steadily increasing from 1914 to 1920, although that could be a result of better reporting following the creation of the Bureau of Venereal Diseases in 1919. Notably, the ratio of cases involving married versus single patients never rose above its pre-law level of 0.9514 and dropped as low as 0.4356 in 1919. Gonorrhea followed a similar trend, rising overall but decreasing among married patients.²²⁷ It is possible the eugenic marriage law forced

²²² Goodman, “In Sickness or in Health,” 88-89.

²²³ Goodman, “In Sickness or in Health,” 109.

²²⁴ Goodman, “In Sickness or in Health,” 113.

²²⁵ Jesse Rifkin, “Oklahoma Lawmaker Wants To Test Everybody For Syphilis Before Marriage,” *Huffington Post*, January 20, 2015, accessed November 16, 2016, http://www.huffingtonpost.com/2015/02/20/oklahoma-stds-marriage_n_6722650.html

²²⁶ “How to Evade the New Eugenic Law,” 12.

²²⁷ Harper, *Twenty-Fifth Report*, 113; Harper, *Twenty-Sixth Report*, 103; Harper, *Twenty-Eighth Report*, 150.

diseased individuals, who were marrying before the law, to remain single, which could explain these ratios.

In the years immediately following the law, the marriage rate noticeably slumped and, even with the spike of marriages before World War I, did not return to the pre-law rate until after 1919. The first five months of 1914 produced 3,273 marriages against 6,707 marriages in the same months of 1913. The *Stevens Point Daily Journal* attributed the drop to the fact “Wisconsin’s eugenic marriage law [had] scared many Badgers out of matrimony.”²²⁸ In the State Board of Health’s biannual report, Harper, a strong proponent of the law, admitted the “considerable” decline “may [have been] due in part to the operation of the eugenics marriage law” but insisted “large increase in the cost of living [was] the principal [sic] cause.”²²⁹ The changing economic conditions, however, did not explain the sudden popularity in out-of-state marriages, where applicants needing medical certificates “seldom [had] difficulty getting them.” Just across the border, Waukegan, Illinois ran a “marriage mill,” where justices conducted 300–400 marriages each month—75% of which consisted of Wisconsin couples as of 1920.²³⁰ One critic of the law claimed 40% of the couples in Milwaukee County who married traveled to Waukegan to do so, although Hall believed the actual statistic was closer to 16%.²³¹ The

²²⁸ “Drop of 1,434 in Weddings,” *Stevens Point Daily Journal*, July 27, 1914, 1. Newspaper Archive (13639954).

²²⁹ Harper, *Twenty-Sixth Report*, 180.

²³⁰ It should also be noted that couples might not have been marrying out of state for the purpose of evading the eugenic marriage law but to avoid publicity. Wisconsin required couples to post notice five days before a license could be issued, giving relatives an opportunity to file objections. See Hall and Brooke, *American Marriage Laws in Their Social Aspects*, 36. Other sources claimed these out of state marriages were not “a willful violation of the law” but that many couples left early for “their honeymoon and did not marry until crossing the state line.” See “Marriages Show Decrease,” *Grand Rapids Tribune*, January 27, 1915. Newspaper Archive (9663383). For reference, see Roloff, “‘Eugenic’ Marriage Laws of Wisconsin,” 235.

²³¹ Hall, *Medical Certification for Marriage*, 59–60.

Madison Sunday State Journal argued these out of state marriages were “offset by those attracted to this state because of the ‘wholesomeness’ attending marriage here.”²³²

Without complete demographic information, it is impossible to know how the marriage rates of particular minority groups fluctuated in the years following the law’s passage. The State Board of Health did, however, sort grooms and brides into two categories: “native” and “foreign-born.” Starting in 1914, the number of marriages where both parties were foreign-born decreased in bits and pieces. In 1913, 2,598 such ceremonies occurred; by 1919, that number had dropped to 1,128. Likewise, the interethnic marriages as a percentage of total marriages decreased from about 14.5% in 1912 to 11.1% in 1919.²³³ Although these changes cannot solely be attributed to the eugenic marriage law, the nativist biases in the examinations lend themselves to such an effect.

Additionally, although the State Board of Health did not publish race statistics concerning marriage, modern studies suggest that certain groups married less while the law was in effect. Economics professors Kasey S. Buckles, Melanie Guldi, and Joseph Price found that blood test requirements (BTRs) similar to Wisconsin’s eugenic marriage law deter marriage, with the effect being larger “for blacks, for young women, and for mothers without a high school degree.”²³⁴ In states with BTRs, black people were 4.4% less likely to marry.²³⁵ For women of lower socioeconomic status, the presence of BTRs was “both statistically and economically meaningful” as they decreased the likelihood of marriage “by 2.8% for black women, by 3.5% for women without a high school degree, and by 1.3% for women under 25.”²³⁶ Considering that

²³² “Eugenic Law No Hinderance [sic] To Cupid Here,” *Madison Sunday State Journal*, May 24, 1914, 9. Newspaper Archive (300985979).

²³³ Harper, *Twenty-Fifth Report*, 9-10; Harper, *Twenty-Sixth Report*, 160-161; Harper, *Twenty-Seventh Report*, 168-169; Harper, *Twenty-Eighth Report*, 198-199.

²³⁴ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 4.

²³⁵ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 20.

²³⁶ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 22.

Wisconsin was included in this study, it is not a stretch to extrapolate that its eugenic marriage law could have had similar effects back in the 1910s. In addition to the economic deterrent, Buckles, Guldi, and Price point out that there may be “psychic costs” associated with syphilis tests such as the trauma from learning one’s disease status, the “non-negligible disutility from a visit to the doctor,” or “the procedure of having blood drawn.”²³⁷

Although Wisconsin’s eugenic marriage law was repealed, its legacy lingers in the hospitals and legislatures of today. Even as they were repealing their eugenic marriage laws, some states, such as Illinois and Louisiana, experimented with new laws that substituted HIV for syphilis. As happened with Wisconsin’s eugenic marriage law, in Illinois, “hundreds of Illinois couples decided to marry in other states or not to marry at all” in reaction to the mandatory premarital testing.²³⁸ Although Illinois has since rescinded this law, similar laws appear in state legislatures at regular intervals. As recently as 2015, Oklahoma’s Senator Anthony Sykes introduced a bill that stated marriage licenses would only be granted to those people “not infected with syphilis or other communicable or infectious diseases,” as determined by a blood test.²³⁹

As long as American society continues to debate marriage regulation, we must study laws like Wisconsin’s eugenic marriage law. Understanding how a seemingly fair public health law can be used for discriminatory purposes can help us recognize modern laws that function similarly. Buckles, Guldi, and Price proved that “even small changes in the cost of marriage can have significant effects, particularly for certain populations.”²⁴⁰ And when it comes to love, everything is significant.

²³⁷ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 11.

²³⁸ Goodman, “In Sickness or in Health,” 106.

²³⁹ Rifkin, “Oklahoma Lawmaker Wants”

²⁴⁰ Buckles, Guldi, and Price, “Changing the Price of Marriage,” 24-25.

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