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MARRIAGE, STERILIZATION AND COMMITMENT LAWS
AIMED AT DECREASING MENTAL DEFICIENCY.

JESSIE SPAULDING SMITH.¹

During the last decade there has been a growing interest among all intelligent people in the problem of moral and social reform. Foundations have been established, social settlements endowed and societies of various kinds formed for the improvement of conditions among the human race. Women's clubs have conducted organized philanthropy. Psychologists have brought their best thought to bear upon the subject, and other educators have come to regard the solution of this problem, even in a very small part, as their most pressing duty.

As one result of this activity there have been gathered statistics regarding the number and condition of the mentally deficient, and others socially unfit, that are truly appalling. This does not mean that the number of persons mentally and physically diseased is necessarily greater than formerly, but it does mean that there is greater intelligence respecting such conditions. In the light of what Miss Addams calls a new conscience, people are seeking a remedy for these evils. There are indications of a willingness to seek a lessening of physical, mental and moral deficiency through the prohibition of unfit marriages, and the commitment and proper care of the defectives. A strong moral sentiment already exists against the marriage of persons tainted with insanity, epilepsy and venereal diseases. At the meeting of the first International Eugenics Congress in London, July, 1912, there was much discussion of this aspect of the problem. It was urged to check the transmission of criminal tendencies, stop immorality, and stamp out degeneracy by preventing the reproduction of the unfit and by forbidding marriages of the mentally deficient.

It is immediately evident that to accomplish this there must be suitable legislation. Moral sentiment alone affects only certain classes, and the psychology of the masses makes legal provision necessary. This has already been done to a certain extent in both the United States and Europe, and a brief survey of these laws may help us to get a comprehensive view of the conditions and a realization of the need of regulation.

At present thirty of the United States, including territories and the District of Columbia, have restrictive marriage laws of some sort. Twenty-two of these simply declare voidable marriage of insane per-

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sons or of idiots. In several of the states there is a general statement to the effect that marriage of those physically incapable or having a want of understanding may be declared voidable. The remaining eight states have definite legislation restricting the marriage of the unfit of various classes. The reason for the prohibition is usually a legal one: namely, that marriage is a contract, and that the affected person is incapable of making a contract. However, in a number of cases the prohibition is apparently made primarily on eugenical grounds—for the purpose of cutting off the bad germplasm—to diminish the number of children who will eventually need state aid.

The first step in this direction was taken in Michigan in 1899, when a law was passed providing that no person afflicted with certain venereal diseases and not cured of the same is capable of contracting marriage. This was followed in 1905 by another, which reads as follows: "No person who has been confined in any public institution or asylum as an epileptic, feeble-minded, imbecile, or insane patient is capable of contracting marriage, unless, before the issuance by the county clerk of the license to marry, there be filed in the office of the clerk a verified certificate, from two regularly licensed physicians of the state, that such person has been completely cured, and that there is no probability that such person will transmit any such disease or defect."

This law is weak in two respects. It does not include patients in private institutions, and it makes it possible for persons who are only apparently cured to marry. Cure of certain venereal diseases is never sure, and persons who have been affected with these should be forbidden to marry. However, there are some very excellent points in this law, which unfortunately has never been fairly enforced.

A law passed in Kansas in 1903 prohibits the marriage of an epileptic, imbecile, feeble-minded, or insane person, unless the woman be over forty-five years of age.

In 1904 the states of New Jersey and Ohio amended their marriage laws, making certain restrictions. That of the former state is almost exactly like the Michigan law, which has already been quoted. The Ohio law states: "No license shall be granted where either party is an habitual drunkard, epileptic, imbecile, or insane person; or who at time of making application is under the influence of liquor or drugs." This is the first regulation of the marriage of drunkards, but it has never been rigidly enforced.

The marriage law which has perhaps attracted the greatest attention throughout the United States is that of Indiana, passed in 1905. This act, which is made up of three laws, combines the good points of

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the Ohio and Michigan legislation and also introduces others. The first is a law forbidding the marriage of the mentally deficient, persons having transmissible diseases, and habitual drunkards; the second requires a health certificate of all persons who have been released from institutions; and the third declares void all marriages contracted in another state in an effort to avoid the Indiana law. Because of its many excellent features it may be well to quote this act in full or nearly so:

“There shall be uniform marriage licenses throughout the state. Licenses may not be issued in the following cases:

1. When either party is imbecile, epileptic, of unsound mind, or under the guardianship of a person of unsound mind.

2. To a male person who has been in any county asylum or home for indigent persons, unless it can be shown that the cause of such conditions has been removed, and that the man is able to support a family and is likely to continue so.

3. If either party is afflicted with a transmissible disease, or at time of making application is under the influence of intoxicating liquor or narcotic drug.

This law provides for a hearing before a circuit judge, and his finding is final.

This law declares void all marriages contracted in another state by citizens of Indiana who merely wish to escape the provisions of this law.”

This latter provision has been maintained by the Supreme Court of the state of Indiana, but it has not yet been tested in the United States courts.

The Chilton Act, recently enacted in Minnesota, restricts the marriage of unfit persons, but there are no records of its having been enforced as yet.

During the year 1913 two more states, Pennsylvania and Wisconsin, passed laws restricting the issuance of marriage licenses. The Pennsylvania act is very much like that of Indiana. That of Wisconsin requires the physical examination of males before marriage, prohibits the marriage of first cousins, and restricts very materially the authority of any official to issue special dispensations for marriage without the lapse of five days from the date of receiving the license. Efforts to enforce the first part of this law have met with great difficulty in that many physicians have refused to make such examinations. The Milwaukee County Medical Society in a meeting of December 15, 1913, voted to refuse to make the examinations and issue the certificates required by the law. A committee was also appointed to take up the matter with the proper authorities and try to convince them that such a law is absurd. It is to be hoped that

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they will not succeed in their efforts to persuade the present legislature to repeal the law.

Much interest has been manifested in the legislation attempted in California during the last session of the legislature. Five so-called marriage bills were introduced, of which one, Assembly Bill 1126, was passed by both houses, but failed to receive the signature of Governor Johnson. This bill required a health certificate of every applicant for a marriage license; forbade the marriage of persons afflicted with certain venereal diseases; and provided for a division of marriage and child welfare in the bureau of vital statistics. This bill was championed by many earnest workers of the state, while many others feel that it would have proven inadequate if it had been approved. It is true that it made no provision against the marriage of persons who have been afflicted with certain diseases, such as gonorrhoea, and apparently have been cured; and no provision against the marriage of citizens of California in other states in an effort to avoid the California law. There undoubtedly will be further legislation upon the subject in this state in the near future.

There is also great need for legislation along other lines to provide for a better posterity. Unfortunately there is procreation among certain classes without marriage. At present less than half of the mentally deficient are confined in institutions, hence many are allowed to reproduce their kind. These in their turn become a drain upon society. It has been observed that two feebleminded people never produce a normal child, and when one parent is deficient the tendency is toward deficiency in the children. As these people are very prolific the danger is easily recognized. To correct this, two remedies are suggested, asexualization and the establishing of more institutions for the care and training of these feebleminded people.

Sterilization, which is advocated by many, has for its object the prevention of criminal heredity and the inheritance of feeblemindedness, epilepsy, etc.; the prevention of rape and the punishment of rapists; and the benefit of the sexually perverted. It can now be done by a simple operation, which in most cases is followed by good results, and eight states now have laws requiring the sterilization of criminals, idiots, and moral imbeciles. The law passed in Indiana in 1907 is typical. It provides for compulsory sterilization of criminals, idiots, and imbeciles under certain circumstances and safeguards. This act is based upon the principle that heredity plays a most important part in the transmission of crime, idiocy, and imbecility. No operation may be performed except under the advice of skilled physicians and surgeons, and only in cases that have been pronounced

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unimprovable by experts. The law permits of any method of sterilization known to science.

Connecticut, California and Washington passed similar laws in 1909; Nevada, Iowa and New Jersey in 1911, and New York, Michigan, Kansas, Wisconsin and North Dakota in 1912-1913. Of these twelve states only two have enforced the law, namely, Indiana and California. In the former about two hundred operations have been performed, but the enforcement of the law has been suspended now, because the governor of the state believes it to be unconstitutional. In California some three hundred operations have been performed, and many good results have been noted. At the last session of the legislature the law of 1909 was repealed and another, Chapter 363 of the statutes of 1913, was enacted to take its place. Under this law any person who has been lawfully committed to any state hospital for the insane or to the Sonoma State home may be sterilized with or without his own consent. It also provides for the sterilization of criminals, especially rapists and sexual perverts, in the prisons of the state. The last provision is for the asexualization of any idiot under the direction of the medical superintendent of any state hospital with the consent of his parent or guardian.

As these laws apply mainly to the inmates of state homes and hospitals, it is important to see what provisions are made for the commitment to such institutions. In practically all of the United States there are laws requiring that the insane be committed upon complaint of members of the community in which they live, but few provisions are made for the care of the feeble-minded. There are no laws on record under which a feeble-minded child can be committed without the consent of his parents unless they be declared incapable, and another person is appointed the legal guardian of the child.

At present there are but forty-two institutions for the feeble-minded in the United States. However, there are in these many who could engage in some useful occupation outside under intelligent direction if it were not for the danger of reproduction. This would leave room for the training of those who now cannot be accommodated. It will thus be seen that both sterilization and segregation are necessary. The expense of maintaining such an institution need not be great if it is rightly managed. All of the inmates who are capable of receiving any training should be instructed along lines which will be useful in caring for themselves and those of lower grade mentality. If a farm and many of the simpler industries are conducted, the institution may be self-supporting or nearly so.

From what has been said it is very evident that there is great

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need for uniform marriage, sterilization and commitment laws in the United States. Our dual system of government makes the enforcing of the present laws difficult, for each state is bound to respect the laws of others. Even when there is provision against the marriage of citizens of one state in another for the purpose of evading the law of the home state it is not always possible to prove that there is the intention to evade the law. Another difficulty presents itself in those states contiguous to Canada and Mexico. Washington has recently repealed a marriage law, because it could not be enforced. Persons wishing to evade it went to Canada for marriage. The same conditions are true in Michigan.

As the population of the United States is mainly of European origin, and the greater number of our immigrants are from the European countries, the conditions in Europe are quite as interesting to us as those of our own country. The increased immigration that is expected with the opening of the Panama Canal makes it still more important.

In England there is about the same proportion of institutions as in the United States, and the new Feeble-minded Act provides more strictly for the commitment of the unfit to institutions. This law also makes it a misdemeanor for defectives to marry. We find laws for the betterment of the race quite general in northern Europe, but there are practically none in the southern part of the continent. There are marriage restrictions in Germany, Scandinavia, Denmark, Holland, and France. Two countries, Germany and Sweden, require the reporting of venereal diseases, because of their prevalence among the soldiers of their great armies.

In spite of the great strides that have been taken, there has been a great failure of the present legislation to accomplish the looked for results. For this there are two reasons—the fact that there is procreation without marriage, and the existing public sentiment against sterilization. Both of these can be remedied only through public education.

In this connection it is very significant to note that there is a demand among churches for reform along these lines. There is a recent ruling of the Cathedral of SS. Peter and Paul in Chicago calling for a certificate of health and purity for those who wish to marry. The English Church has taken similar action. This is significant in that it indicates an effort to enforce a moral law without legal provision. Such sentiment may finally lead to ideal legislation upon the subject.

The ideal legislation of the future will undoubtedly make the

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following provisions. It will require physicians to report all cases of venereal disease, epilepsy, feeble-mindedness, insanity, tuberculosis, mania for drugs or habitual drunkenness, and congenital blindness or deafmutism. It will require a health certificate from every person who applies for a marriage license, and it will forbid marriage between persons afflicted with any of the above diseases. Power to enforce these laws will be given to the proper authorities, and the penalty for the violation of them will be sufficiently heavy to insure respect for them. In the future better and more extensive provision will be made for the epileptics and the feeble-minded in institutions. There should be separate colonies for the epileptics, the high grade imbeciles and morons, and the low grade imbeciles and idiots. Commitment to these institutions will be made by the court upon the complaint of three persons and the examination of two competent physicians, as well as upon application of the parents or guardian of the defective individual. An effort will be made to cure or improve the condition of the epileptics, and the high grade feeble-minded will be trained for some useful work, but none will be dismissed from the institutions uncured without first being sterilized. All idiots and all imbeciles of low or medium grade will be sterilized, whether they are confined in institutions or not. These suggestions, though radical, are not impractical, and they point definitely toward radical improvement.

No one with any regard for social improvement desires to see the state of marriage unnecessarily fenced around with legal impediments, or wishes to infringe upon the personal rights of any individual. He simply asks that the matter be scientifically regarded. Society has been awakened to the fact that it is responsible for its own sins. We are rapidly coming to the realization that it is not only our right, but our duty to protect the future from the evil of the past and the present.

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