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A CRITIQUE OF THE LEGAL, ECONOMIC AND SOCIAL STATUS OF THE EPILEPTIC

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It has been held as a principle independent of legal construction that it is not for the best interests of society as a whole to recognize that certain individuals undergo periods during which they are not responsible for their acts. In the case of the epileptic, except for acts which have occurred while in a seizure or which have been committed by a demented epileptic, the law holds him responsible at all times. The legal view, more erroneous now than ever, adheres to the older concept that the disorder is essentially a periodic one, and that in the interval between seizures the epileptic is a normal individual with no evidences of mental impairment. The condition of the demented epileptic is legally held coequal with that of other mental disorders in that all dementes are recognized as lacking responsibility as well as testamentary capacity.

Epilepsy is consistently indexed under the heading of insanity; but proof of epilepsy does not necessarily directly establish insanity as insanity is not always associated with epilepsy; but the existence of the epilepsy may be admitted as evidence to bear upon the determination of the mental condition of the accused person to the extent of establishing insanity. The courts still persist that a person suffering from insanity "must not know the nature or quality of the act or that it is wrong" (MacNaughton). It is therefore necessary for one to show that the epileptic comes within the scope of this definition. This is the case only during an active epileptic psychosis, such as the transitory deliria following an attack; while the subject is actually in an attack; or during a state still classed as psychic epilepsy or the psychic equivalent of a seizure. Obviously the law fails to regard the epileptic makeup in itself as admissible evidence of legal insanity. A few courts have shown a willingness to look with some favor upon a broader construction of what constitutes the legal status of insanity in the epileptic, so that the essential makeup might be legally construed to designate irresponsibility, but it must be admitted that there is an increasing number of court decisions which conflict with this view. In advancing toward a more tolerant and broader interpretation of law, the courts often admit evidence formerly ruled against or definitely excluded when introduced by the defendant's counsel. Evidently in many in-

stances the judge and jury consider the epileptic state alone to be worthy of clemency though in strict legal construction such an individual may be responsible for his crime.

Before 1874, Zacchias laid down that "every epileptic be held irresponsible for any criminal act he may commit three days before or three days after an epileptic fit." It has usually been held that the burden of proof is on the accused to satisfy the court beyond a reasonable doubt that he was not of sound mind when the crime was committed. It is an error to charge the jury in a murder prosecution that the law presumes every defendant to be of sound mind. The fact that a defendant if shown to be epileptic must be either freed or convicted, while if he is found to be insane may be held guilty but insane and committed to an asylum, undoubtedly has much to do with the tendency of juries to convict criminals who are proved to be epileptic—with the present status of the epileptic, what other way have they to protect the community? Occasionally, as a matter of expediency, the epileptic is held insane and is committed. But even a committed epileptic has been held to be sane in his interparoxysmal periods, and a will made in the interval between seizures is held valid, for it is not the rule that a person's mentality must be perfect to make a will.

Decisions of especial importance in the matter of criminal responsibility of epileptics deal with the distinction between insanity and weakness of mind, impaired mind, unsound mind, etc. It has been repeatedly held that a person with a weak or even disordered mind is not excused from the consequences of his crime, and a jury need not pass upon the strength of the defendant's intellect or moral perception except as they affect the general question of his knowledge of the nature and quality of the actual crime at the time of perpetrating it.

Where insanity is relied on as a defense, a person is not relieved of the consequences of a criminal act unless at the time of commission he was suffering from some disease of the mind. In a will case, it was held that the contestants were properly refused the instruction that "it is a matter of common knowledge that epilepsy is a mental disease," because such instruction would assume mental unsoundness. In the case of a young man who was proved to have had frequent grand mal attacks up to the age of twelve and many petit mal attacks since, the last one occurring the day before he committed the crime of murder and who had been drinking heavily the day and evening of the crime, the court held there was no immediate presumption of insanity from epilepsy, and the man was convicted. A 1909 decision relating to alcohol and the epileptic states that "an epileptic not shown

to be insane can no more escape liability for his act while intoxicated than one not so affected."

The automatic states following epileptic convulsions have often, though not invariably, been held sufficient excuse from being held responsible for a crime. A recent English authority states that automaticity may occur during slight epileptic seizures without motor symptoms; the patient is pale for a few moments and may not notice loss of consciousness. If no convulsion takes place there is a tendency to perform some involuntary act. This act might be criminal though involuntarily, and there is no volition or cognition of the unlawful act. Complete lack of memory of crime has been a reason for juries to acquit; but other cases exist of crimes by epileptics with complete amnesia, and the juries convicted. The matter of epileptic furor is touched upon in medico-legal works, and it is stated that there is no doubt but that genuine enduring epilepsy does actually cause dementia, and during the process produces some of the most destructive impulsive lunatics.¹

It is thus seen that there is a legal issue of responsibility in epileptics regarding acts committed during seizures or in epileptic dementia. Aside from these fixed points the state of epilepsy alone presents a question of responsibility worthy of court inquiry and upon which adequate evidence may be accepted by the courts. When, however, we turn to the larger and more intricate question of social responsibility, we find we are confronted with a number of facts which play no small rôle. First, the temperamental makeup gives us a clue to the essentially small demand which social obligations in general impose upon the epileptic. One may not say whether there lies in the epileptic soul a greater portion of distrust and uncharitableness than is possessed by other egoistic individuals; however this may be, in the absence of conscious desires for gregariousness one must infer that the epileptic must possess positive contrary impulses which diminish his conscious efforts at being sociable. We may also call attention to the embittering effect the fits themselves may exert. So soon as the epileptic knows the nature of his disease, or even before, if he has been kept in ignorance, he finds many restrictions of his natural desires. The unfriendly, often tearful attitude of his associates may also tend to increase his bitterness toward a world from whose natural activities and enjoyments he is so seemingly unreasonably debarred. Even though he were but normally endowed with unconscious dislikes and hates, the artificial barriers suddenly placed against him would tend to

¹Taylor, "Principles and Practice of Med. Jurisprudence," Vol. 1, 1920.

force his antisocial traits to the fore. No wonder he loses many of the human virtues at the advent of so cruel a fate. Frustration may well engender despair, and if long continued may change to an active desire to wreak vengeance upon those who apparently are responsible for his restricted environment. However, one should not hold such a plea too strongly, for many epileptics manifest their sadistic and antisocial tendencies long before seizures occur to account for their cramped and distorted activities.

The epileptic's hostile attitude is often shown toward those perhaps least responsible for his undoing. Indeed, the epileptic type of murder is frequently perpetrated in instances where no motive to kill has been brought forward. It is almost always nihilistic, as though the discharge of the effect were carrying a long series of unredressed wrongs. In other words, the sadistic impulse is probably always unconscious and is held in check only by such poor power of repression as the epileptic may develop. Even in the mildest types the epileptic shows the beginnings of a sadistic attitude. Let us see what case studies show in this respect. An epileptic past middle age when in an irritable mood often experienced a desire to do violence to persons as well as inanimate objects. He felt particularly an impulse to injure small children who happened to pass him in the street, and even infants in baby carriages did not escape his desire to harm. He became excited when a laborer accidentally brushed against him, and struck at him and irritably requested him to keep to the other side of the street. Playing children were often driven away from the workshop door if they chanced to come too near. In another instance, a young girl of nine years, several years epileptic and who continually wore the unhappy expression of a thwarted child although reared in a cultured environment, used to go about kicking chairs, slapping and pinching and playing petty tricks upon her companions, hiding their belongings and enjoying their general discomfort. When remonstrated with and having it explained how unpleasant such acts must be to her associates she answered, "I don't think they will mind it very much," but readily assented that she would not like them to do the same to her. In still another instance, in an epileptic girl in late adolescence who, with great difficulty, was taught to play Bridge, so soon as she had learned to understand the game she scored her partners at the slightest misplay and when reminded how patient they had been to teach her she replied, "I don't care; I'm going to get even for what you all did to me" (misinterpreting her former instruction for unjust criticism).

Numerous instances may be cited, from which we may rightly infer that the sadistic impulse is unconscious and deep-rooted in the epileptic soul, that it is a part of his defective primary instincts and is forced into the open at the slightest provocation. It is interesting to note that sublimation of this impulse is possible if we allow a proper and acceptable outflow of this energy before it has definitely allied itself to sadistic outlets, so that the epileptic may impoverish the desire for its inordinate exhibition even under reasonable provocation. Further studies in this direction are of great therapeutic moment to all in charge of epileptics in hospitals and prisons.

For one whom the natural feel of an altruistic world holds so little appeal, laws and customs are very necessary for the protection of society. At the same time society exacts obligations upon its members which necessarily overburden the epileptic as a result of his rigidity to adapt, and the maintenance of his well-being is thus made the more difficult. As a result of his nonconformity to a socialized community, society has insisted that the epileptic as a class be interned. It is a supererogation to say that this is due to the distressing occurrence of attacks in public places. Certainly they are no more objectionable than exhibitions of extreme intoxication and yet there has been no great demand to interne the alcoholic. What is apparently tacitly assumed by society is that in the interval state the epileptic possesses a type of antisocial character and an incapacity for sustained co-operative employment which demand his segregation from the normal community. Even though society as a whole may be willing to put up with him, we find his fellow workers who are constantly associated with him can or will not. They do not take so much exception to his slowness and low productivity as they do to his defective temperament, which makes him out of rapport with the group; so they refuse to put up with him any longer than is absolutely necessary.

Parents and relatives early learn to exact less in conduct from the epileptic member of the family. When this leniency may prove of temporary advantage, such partiality often works havoc in the discipline of the home, and if there are others in the household possessing less insight and patience than the wise parent, they do not lessen their intolerant demands that the epileptic member confine his dilapidations in conduct to himself. This in turn often further embitters the epileptic individual and his equal demand for his supposed rights builds larger and larger his innate defect to adapt to the home and the community life. Often one or more members of the family, realizing they have a problem to cope with, shut themselves away from a

normal existence within the community and devote themselves to the care of the epileptic relative. In this manner the latter becomes interned upon the family. Frequently one or both parents possess difficult traits of character so that there is friction between them and the epileptic. Innumerable instances show this unhappy plight.

We have hastily sketched some of the personal, family and community difficulties in which the epileptic finds himself; if we realize that these exactions of home and society are not adapted to his make-up, what is more natural than that an environment more suitable for him be sought? This naturally leads to the question of interning them under a regime fitted to their particular needs.

Industrial Life of the Epileptic. Formerly it was supposed that the epileptic was incapacitated for work only during seizures or, in extreme cases, for a short time following attacks. It now may be shown that a certain change in character is present in any moderately enduring state of his disease, and deterioration almost invariably succeeds. This alteration in makeup must be taken account of in estimating the epileptic's economic ability. The problem is further complicated by his innate peculiarities which are further deteriorated by his disorder and renders his industrial usefulness a great question. Even under ideal conditions the epileptic cannot be made self-supporting for any extended period. Nor is his economic inefficiency directly due to his mental handicaps, for colligated in as yet some unexplainable manner are his physical disabilities. His muscular and circulatory equipment do not make for a robust physique and he is usually incapable of intensive and prolonged labor. On an average one may say that epileptics supposedly not deteriorated are but a third as efficient in industry as compared with controls. The belief expressed a few years ago that given land for colonization purposes and the proper working conditions the interned epileptic would be self-supporting, has been abandoned after practical tests drawn from a long experience with the interned epileptic (Flood). The most thorough studies of the working efficiency of epileptics in colonies give not more than 30 per cent of the patients actually employed in occupations that would be normally competitive or productive in the outside world. Another 25 to 40 per cent are used for closely supervised housework or ward work and is accomplished by employing a constantly shifting force. The remainder are wholly unemployable; they are either demented or are so engrossed in the contemplation of their own symptoms that their slight energies may not be put into productive work. This often chronic state of hypochondria is as common a symptom as the seizures

and is much more enduring. The danger of attacks may prevent many from engaging in a variety of occupations which might seem suitable, such as ice harvesting, teaming, painting on scaffolds, etc.

The first problem which confronts the epileptic is whether he really should work at all. Either his illy adjusted life before intern- ing has branded him with invalidism, or he questions the justice of having to be productive (pauperism), and the institutions of society are made to serve him. On the strength of the benefit which he will derive to his own health, or better, with much praise of his ability and some additional small rewards which increase his personal comfort, this hurdle may be finally leaped. Simply a desire to work fails to produce a first-class product, and even in the uncritical atmosphere of his interned life he dimly realizes, perhaps, the exaggerated praise he may receive is not thoroughly genuine; again, to the general slump in his ability preceding or following attacks makes for untranquil and unequal employment. Nor is this all; the major difficulty, as before noted, is his failure to properly adjust to his fellow workers and to his superiors. His demand is largely to engage in something which he may perform by himself without interference or supervision. He cannot work under pressure to complete his task in a specified time. He can neither start his task nor stop at a fair rate of speed. Often after a short rest he must gradually work up to his former speed. This very irregularity in time and character of work is costly. The epileptic generally has a rather common failing shared with other inefficient workers in imagining himself capable of doing something else more important than the task at hand. Thus we have the epileptic who may be a pseudo-inventor spending nine-tenths of his time talking of his successes, calling attention to his sufferings, or tidying his workshop. If inefficiency is thus found in his work in a colony setting, how much less chance has he in an extramural environment? The chance of even a partial support is poor. Many individuals have attacks at night only. It is true this may be advantageous; but they may change to diurnal almost at any time and once changing rarely return to the nocturnal type.

In a study of several hundred interned epileptics (Flood), there were but 17 patients who were profitably employed in the industrial shops of the institution. One of this number was a man who sorted hair and who averaged but five working hours a day; he was rated as 75 per cent efficient. One man employed in the institution store reached only a 50 per cent rating. A painter rated at 60 per cent averaged but five hours work a day but wasted time and his superiors'

patience by quarreling with fellow workers, fussing about windows being open or shut, and exhibiting other types of annoying behavior. A cutter "who never did any sewing" was very angry if anyone tried to direct him about his work. He could not bear to have the least suggestion offered, and when he thought someone else was to be given his work he secretly destroyed a large number of patterns. His efficiency rating was not over 10 per cent. A good mason who held the highest record for efficiency in the performance of his work and who often worked for six hours a day, was unable to maintain an average over forty per cent owing to the frequency of attacks, which were often attended by dislocation of the shoulder. The majority of the others averaged from one to three hours daily.

In a more precise mental analysis of the epileptic upon which the economic and industrial efficiency must rest, one investigator (Katzen-Ellenbogen) found among other facts that the epileptic work-curve is peculiarly different from controls, in that a rest pause gave him a smaller increase in efficiency than the normal subject and that much energy must be expended for overcoming inner resistance; epileptics therefore had to work with a much greater effort of the will. The daily percentage of average increase in training was half as high on an average as that of normal controls. All of which has a tendency to show that the epileptic's innate defect to adapt to work is consistent with that found in his other life activities.

We may now turn to a more favorable picture of the industrial and economic efficiency of epileptics who are not interned but who reported to the social service department of a large ambulatory city clinic. The type of patient studied was for the most part either those who had infrequent attacks or those who required only very temporary interning.² The class studied was by no means a negligible one, as they comprised about 9% of the total reporting for placing. The epileptics as a class were between the ages of eighteen and twenty years, many were married and were of the semi-skilled laboring class. They had both severe and mild attacks and usually lost their employment because of attacks rather than inefficiency. Thirty per cent, however, lost their jobs because of irregular attendance and temperamental peculiarities. Thirty per cent were retained because of the efficiency they had acquired before the occurrence of attacks. A number of patients had small businesses of their own; two owned news-stands, one had a garage; one was a guide about the city; one kept a lodging

²M. Ryther and M. Ordway, "Economic Efficiency of Epileptic Patients," *Jour. Nerv. and Ment. Dis.*, May, 1918.

house; one was a can-seater; one had a small printing business; one did sewing at home for a wage; two were janitors.

A certain number were shippers, packers and newsboys, who were working for other people, yet in an independent fashion, and were able to hold their jobs for considerable periods.

Sixteen per cent of the patients earned as their highest wage \$15 to \$20 a week; the highest wage of 30% was between \$10 and \$15 a week. The highest wage of 38% was between \$5 and \$10 a week. The highest wage of 16% was between \$1 and \$5 a week.

The position of teamster was held by the largest number of patients (24%), but although many of these kept their position for considerable lengths of time, 12% lost their jobs because of attacks.

Messenger service attracted the next largest number (16%) and 7 patients lost their work because of attacks. The survey would seem to indicate that the large number of patients resorting to this method of earning a livelihood do so because of their inability on account of their disorder to keep the jobs they had been fitted for.

Farm work has the third largest group (10%). While outdoor labor and farming are considered the best mode of employment for the epileptic, the survey showed that over half were discharged because of the character and frequency of attacks. Domestic service came next (9%), and more than half were discharged because of attacks. Seven and a half per cent were clerks, and half lost their jobs because of attacks. Seven per cent were nursery maids, and all but one lost their jobs because of attacks. Four per cent worked on power machines, and one-half lost their jobs because of attacks. Four per cent were cutters in shoe factories, and 2 lost their jobs because of attacks. Five per cent were heel makers, and all lost their jobs. Five per cent worked on machines in machinery factories, and 3 lost their jobs because of attacks. Two and a half per cent were firemen for the railroad. They did not lose their jobs but gave them up as they realized the danger. Four per cent were elevator operators, and 2 lost their jobs because of attacks. An engineer for a gas company lost his job because of attacks. Two and a half per cent were tree climbers and lost their jobs because of attacks.

The character of many of these occupations shows actual danger to the patient, employer and community. However, the records show that the percentage of patients in dangerous occupations is very small in comparison with the number of epileptics in industry in general.

In spite of all their difficulties, in many instances epileptics do obtain work and support themselves, and may even contribute to the

support of their families. In the opinion of laymen and physicians alike, the mental capacity of epileptics is to be rated as distinctly low, and most of the institutional data has seemed to emphasize this fact. However, the institution deals most often with the deteriorated epileptic. The employer, physician, and all interested in preventive measures should get together and plan some method whereby the laws may be modified so that many of the less handicapped epileptics may remain in industry and all may be provided with supervised employment to the limit of their economic capacity.

By and large one may justly say that the innate epileptic temperament impairs the individual's economic efficiency from the beginning. So soon as his seizure epoch is at all pronounced, extraneous and internal causes make for attacks, and mental deterioration together with his primary temperamental endowment results in a lowering in economic efficiency. So soon as the epileptic requires interning for any number of alleged reasons, his economic efficiency suffers a great loss. It shades all the way from 50% of efficiency to almost nil. Under the latter circumstances there is no real opportunity for his ever being trained to a self supporting basis.

MARRIAGE AND STERILIZATION

Six states, Kansas, New Jersey, New York, Oregon, Washington, and Wisconsin apply their sterilization laws to epileptics. In some other states, where the wording of the law is rather vague, epileptics might possibly be included, under such phrases as "other defectives." The test case in New Jersey had an epileptic as a subject. The law was declared unconstitutional because it was class legislation—if it applied to epileptics it should apply to many other classes, such as syphilitics; also it should apply to epileptics outside of institutions, for epilepsy is often found among the well-to-do class who are not cared for by the state. It is also a question how far society is justified in the theoretical betterment of society by sterilization of unoffending but undesirable citizens.

Authorities in charge of institutions for epileptics briefly give opinions on the desirability of sterilization as follows: In Wisconsin they believed sterilization was advisable in selected cases only; in New York such a measure was considered of doubtful value. In Michigan it was thought to be of value eugenically, but a poor substitute for isolation or colonization. In Kansas the opinion was expressed that it was often of little value for institution inmates and should be practiced earlier, and also that it was impracticable at the present time. In

Iowa the officials were in favor of sterilization, and the Iowa law of 1913 had a provision that if an epileptic voluntarily submitted to sterilization the restriction of marriage would be void in his case. This law was repealed in 1915.

New York repealed its law. The law in New Jersey and Oregon has been declared unconstitutional. The rest of the six states mentioned have the sterilization law in their statutes as a practical dead letter. Oregon is perhaps the only state that passed its law in spite of the veto and as has been mentioned it was later found to be unconstitutional. It is interesting to note that in the two states where the law was repealed, New York and New Jersey, a special Board of Examiners for epileptics was specified, but the executive agency carried no provision for neurologists or psychiatrists in its membership. Surgeons are the specialists usually mentioned. The type of examination, however, curiously specified that physical and mental tests were to be made. Washington and Oregon specified further that innate family traits should be studied, Kansas, New York, New Jersey and Oregon made an attempt to limit the operation to those individual epileptics in whom there was no probability of improvement in mental and physical condition sufficient to make procreation advisable. By some these exemptions are regarded as scientifically futile, inasmuch as sterilization aims to eliminate deep-seated and hereditary defects which by their very nature cannot improve. The majority of the states' law carries the implication that one of their needs was that the operation would improve the living conditions of the epileptic. Many states make some provision for protecting the rights of the epileptic by giving thirty days' notice to the inmate and the latter has the right of appeal. The court furthermore may appoint counsel and review the orders of the Board of Examiners. In Iowa, the consent of relatives must also be secured. In most of the states physicians and surgeons are not held liable either civilly or criminally. The order of the board has full warrant for the operations. The Board of Examiners and Executives report to the governors of the several states in which the law remains in force. The following is a brief summary of the legal status and opinions of the workings of the sterilization laws as applied to epileptics:

Sterilization constitutes cruel and unusual punishment. It is painful, injurious, degrading, and may be considered as mutilation. Even in states where the law is not meant to be punitive, it has been contended that there is a punitive element involved. In answer it is said that sterilization is not punitive or painful and that compulsory vaccina-

tion, which also involves physical injury, has been upheld by the courts. Another argument given is that sterilization does not accomplish its object, as the inmates of institutions have little chance to propagate anyway. This objection is of course removed when sterilization applies to the entire community. Still another objection is that the individual is deprived of liberty and individual rights without due process of law, which violates the 14th Amendment of the United States Constitution. In answer it is contended that liberty and individual rights are interfered with by restrictive marriage laws, which have been upheld by the courts; and that the individual does have right of appeal, etc. But even in states where some legal protection is provided, courts have not been satisfied that there is due process of law.

Further, it has been held on scientific grounds that sterilization is not based upon sufficiently well established data. Advocates of sterilization, of course, contend that they are. But the courts continue to feel that the state has no right to speculate where individual liberty is involved.

It is urged that sterilization is an unwarrantable exercise of the police power of the states. While its advocates contend that such police power may be exercised to protect public health, as in vaccination and quarantine, the courts have held that danger to public health must be immediate, not remote. Finally, it is contended that sterilization is class legislation; if it applies to one class of defectives, it should apply to all. In New Jersey it was held that, if the law applied to the epileptics, it should be extended to other classes, and it would then be hard to find legal limits for police power. A more frequent objection, on the ground of class legislation is that the law applies only to defectives in institutions. In both the above respects the law violates the 14th Amendment which states that no state shall deny to any citizen the equal protection of its laws. Where a classification is made on a just and reasonable basis, the courts have held it legal, but an arbitrary classification, such as defectives in institutions, is not considered constitutional. Advocates of the law have held that it does apply equally to all in the same circumstances.

Some authorities, including Laughlin,³ from whom our data are largely drawn, are of the opinion in order to avoid even the one great objection that sterilization laws are species of class legislation, advise a model eugenic law which should apply to everyone in a given class of defectives and that this would remove one of the strongest objections to the present laws. Laughlin would also extend the law to

³Harry L. Laughlin, *Eugenical Sterilization in the United States*, 1922.

include all classes of socially undesirable people, capable of transmitting defective traits, whether they themselves are defective or not. He includes feeble-minded, insane, criminals, epileptics, inebriates including drug addicts; diseased including tuberculosis, syphilitics, those afflicted with leprosy and similar diseases; blind, deaf, deformed, dependent. This sweeping suggestion if possible of fulfilment would certainly remove the other objection to class legislation. There should be no punitive element at all. This would remove the objection of "cruel and unusual punishment." Most surely due process of law should be carefully provided for. Although many operations have been done without authority of law, simply with the consent of the patient, the rights invaded are so fundamental that courts will insist on adequate legal protection for the individual. Laughlin therefore suggests that the power of physicians be directed and limited by the court, which shall notify and summon the inmate, appoint counsel for him, and give him a trial by jury.

Obviously such a law is impossible and probably undesirable of attainment even if it were scientifically possible to delimit the classes which the above all inclusive lists indicate. The status of the sterilization laws (1922) may not be specifically delimited to its application for epileptics solely, but in the states where the epileptic is specifically indicated it is about as follows: In Iowa the law is active theoretically, but practically has fallen into disuse; 49 operations have been performed in three state hospitals. In Kansas the law is theoretically active but practically a dead letter; 54 operations have been performed at the Topeka State Hospital. The law in Michigan is inoperative because declared unconstitutional by the courts; only one operation was performed under it. The New Jersey law has been a dead letter, since the court decision that it was unconstitutional as applied to epileptics; no operations have been performed under it. In Oregon sterilization work is developing satisfactorily under the State Board of Eugenics; 127 operations have been performed, mostly in state hospitals. Although the first law in Washington was declared constitutional, the law there has always been a dead letter.

Officials of institutions are generally in favor of sterilization laws, although agreement on this point is by no means unanimous. Many who believe in the policy of sterilization have not used the law for fear that it would be unconstitutional or that they would get into legal difficulties. While the courts are eager to protect the rights of the individual, some officials feel that there is too much legal protection, and that the physician should have more power. Several institutions

have adopted the policy of sterilizing only inmates subject to discharge, which Laughlin believes is a wise procedure. Several officials who believe in sterilization proceed slowly with it because they feel it is in advance of public opinion or because they meet opposition from relatives and others.

Up to the present time we do not know precisely the eugenic laws underlying the mating of neuropathic stock, and in consequence laws founded upon such supposed finality have proven a failure or have been too inexact for proper enforcement. Undoubtedly the safer course for the present is to rely upon a wider and more persistent study and dissemination of the facts concerning eugenics and let the future decide upon the form and time of legislative enforcement. Hart believes that sterilization of epileptics and other defectives has been much overrated. It has never worked practically (Taft). No state has ever found it a practical measure for dealing with any considerable number of mental defectives.

As regards the social aspects of marriage of the adult epileptic in general, it has been found (Davenport) that if an epileptic marries a partner who comes from perfectly sound stock the progeny will probably remain free from epilepsy or neuropathic taint. Any other combination of inherited predispositions, however, carries various possibilities of risk in proportion to the severity of taint in the special mating.

As an index or summary of the attitude which the law takes of the social status (marriage) of the epileptic as a class, we may cite briefly some of the legislative enactments in the seventeen states which specifically mention epileptics.

Seven states, Connecticut, Kansas, New Hampshire, North and South Dakota, Utah and Virginia, have a definitely eugenic purpose, in that the laws prohibiting the marriage of an epileptic do not apply to women over forty-five years of age. The Virginia law specifically mentions hereditary epileptics where one or both parents have been epileptic. Ten other states—Delaware, Indiana, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania, Vermont, Washington and Wisconsin—also seem to have eugenic motives in restricting marriage, as their laws apply to various socially undesirable classes, not only epileptic and mentally disordered persons, but drunkards, drug addicts, habitual criminals, venereally diseased, tuberculous and indigent persons. The courts in Wisconsin and Connecticut have upheld the right of the state to regulate the marriage of persons afflicted with epilepsy and

other hereditary diseases, and no evidence has been found to show that any court has found such laws unconstitutional.

While some authorities (Pollock) feel that marriage laws may help in eliminating the unfit, others (Davenport, Meyer) feel that they are useless. Several believe that marriage restrictions affect only the better classes, while the most undesirable people go on propagating outside of wedlock (Dilla, Meyer, Sharp). In foreign countries, Bulgaria has a law that persons suffering from idiocy, insanity, epilepsy or syphilis cannot contract a legal marriage. In Denmark a marriage may be annulled if one party is suffering from leprosy, syphilis, epilepsy, or a contagious and loathsome disease, if this condition was concealed and unknown to the other party at the time of marriage. The disease must be incurable. In Greece, persons with defective intellect, insanity, syphilis and epilepsy are forbidden to conclude marriage. In Sweden epilepsy is an impediment to marriage.

As regards the social significance of marriage, nearly all data show that such matings are bad for the epileptic. It is not difficult to comprehend, from an economic standpoint as well as from an increased demand for social adaptation required of the epileptic, that marriage is to be discouraged. In the matter of sexual adaptation alone, the marriage state is usually little else than an autoerotic satisfaction to the epileptic. Full adjustment to marriage is practically never attained ideally by the epileptic. Numerous studies including my own long experience prove that epileptics as a class are not unduly licentious. Although the epileptic may be unduly autoerotic at certain early periods, and especially after his disease has progressed and deterioration sets in, when objective interests fall away and his concern is centered about his own bodily functions, autoerotic indulgences often entirely disappear from the later life of the adult epileptic. Indeed, it is a common experience to find an entire absence of all sexual functioning at an extremely early age (28 to 34 years).

As to the epileptic in juristic and public affairs, the most noteworthy examples are Napoleon and Caesar. Fortunately for the trend of our modern civilization in its awakening to a larger altruism and social consciousness, epileptics are not often prominent in national affairs where their keen individualism would have full sway.

In the matter of religion, the epileptic has shone through the ages. One has but to recall the names of Mohamet, Mother Ann Lee, Joseph Smith and others to realize what an important rôle they have played in the initiation of new religions. Just what peculiarities the latter may possess that may be attributable to the epileptic personalities of their

founders, it is hard to state. Certain it is that they are at least highly individualistic forms of religious worship.

Our general conclusions are:

A special plea for a more flexible legal and medical construction of the epileptic constitution independent of epileptic attacks as such.

A better general understanding of the epileptic as an individual and especially in his social and economic relationships.

More and better public provisions for epileptics.

The general education of the public that marriage by and large is a detriment to the average epileptic. Probably no law can be made to cover this point.

To sift out and apply proper sterilization laws to the epileptic as a class if this be feasible or possible.

More social and legal means for research into the nature of epileptics and the social activities that increase the number of medico-social mishaps. The individual epileptic should be the point of attack, and not the disease of convulsions *per se*.