

REVIEW OF WISCONSIN "EUGENICS LEGISLATION."*

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MUCH of the so-called eugenic legislation in Wisconsin would be more accurately classed under the caption of sex hygiene, since it consists of health measures aimed more immediately at the prevention of venereal disease in the present generation than toward the preservation of the hereditarily desirable. But even such measures must be indirectly of eugenical significance, either positively or negatively, since they are concerned with diseases which have direct bearings on death-rates and birth-rates. Sterilization by gonorrhoea modifies birth-rates no less certainly than destruction by war, and syphilis is probably as responsible for the extinction of family lines as is voluntary limitation of offspring. On the other hand, as regards the law for the sterilization of certain undesirable classes, the purpose is directly eugenical.

The enactment which has attracted most attention and brought forth most comment both within and without Wisconsin is probably the one commonly termed "the eugenic law relating to marriage." It is in reality a health measure intended to prevent the transmission of venereal disease through the marriage relation. Passed hurriedly during the closing days of the legislative session of 1913, insufficient attention was given the wording of the provision and it became a source of much confusion and acrimonious discussion. The unusual publicity incident to the debate, however, resulted in a very wide education of citizens regarding the nature and the purpose of the act.

The original statute (Section 2339, m of the Statutes, 1913) provided in its first section that, "All male persons making application for license to marry shall at any time within fifteen days prior to such application, be examined as to the existence or non-existence in such person of any venereal disease, and it shall be unlawful for the county clerk of any county to issue a license to marry to any person who fails to present and file with such county clerk a certificate

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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."

One of the controversies which immediately arose was as to whether the law, in specifying "the application of the recognized clinical and laboratory tests of scientific search," required a Wassermann test for syphilis. If so, then it was demanding an examination that only a few physicians in the State could make, and even these could not do it for the fee of \$3 specified in section 2. The law also made it compulsory for the official county or city physicians of the State to examine, free of charge, indigents who desired to marry. After much agitation the question finally reached the attorney-general of the State. He rendered an opinion which read in part as follows:

"If there are clinical and laboratory tests, such as the Wassermann test, which require special study and special apparatus for their application, and which only a very small per cent. of the licensed physicians of scientific attainments can apply, I am convinced that the law was not intended to require and therefore does not require such tests. I do believe that the law was enacted on the assumption that physicians, more than any other class of citizens, would appreciate the wisdom and necessity thereof and would cooperate to the best of their ability in its enforcement. The purpose was not to provide a new source of revenue for the doctors; nor, on the other hand, was there an intent to place an undue burden on them. No doubt reliance was placed on the well-known public spirit of the medical profession and the fee fixed at a figure which would cause hardship neither to the applicant nor to the examiner. It is, of course, apparent that physicians can be found who will issue the required certificates no matter what tests the law may be deemed to require, so that, unless the reputable physicians will cooperate to make the law effective (and if they will not, no law of the kind can be successful) the law must largely fail to accomplish any good. But I am convinced that the great mass of reputable physicians will desire to save the law and the profession from disrepute, and will therefore endeavor to carry out the spirit of the enactment and hold themselves ready to give such examinations and tests as the ordinary reputable physician of scientific attainments is equipped to make and may reasonably be expected to make for the fee prescribed. Otherwise it is plain that the charlatan of the profession will seize on this law as a new source of revenue and thus bring the law into disrepute and bring dishonor to their profession. I am of the opinion that the law must be given a practicable and workable construction, rather than one that will defeat its purpose and possibly render it unconstitutional and void; that its obvious purpose was to require only such an examination and test as the ordinary reputable licensed physician of scientific attainments is equipped to make is capable of making, and could reasonably be expected to make for the fee of \$3, and that the 'recognized clinical and laboratory tests of scientific search' do not include the so-called Wassermann tests, nor such tests as can be made

only by specialists, nor such as require special and expensive equipment or long laboratory experiments."

Although many of the physicians of the State accepted the interpretation of the attorney-general and examined candidates for marriage accordingly, the majority of the physicians refused to do so. The latter felt themselves all the more justified when in a test case in Milwaukee the circuit judge ruled that the law was unconstitutional on the ground that it placed an undue and unreasonable restraint upon the solemnization of marriages. It was not until the supreme court of the State had declared the law constitutional that most of the medical men capitulated. Even then a minority of physicians kept up an active opposition.

In 1915 an attempt was instituted to have the measures repealed. Various objections were made, among them, that the law was unjustly discriminatory in that it applied only to men. The answer to this was made by the women themselves, who poured in representatives from women's organizations all over the state, insisting that the law be made to apply to women also if such a measure were necessary to keep it in force.

This challenge was not accepted and the law still applies to males only. The legislative committee-hearings at the time, although disclosing an active opposition on the part of a small group of physicians, revealed an unexpectedly strong sentiment throughout the State in favor of the law. The following incident may be cited as an example of a widely prevailing opinion. An assistant prosecuting attorney of Milwaukee appearing before the legislative committee said that when the law was first passed he had regarded it as one of the best jokes of the season but that after watching its workings for a number of months he had become convinced that it was one of the most beneficial pieces of legislation ever passed in Wisconsin.

During the legislative session of 1917 thorough revision of the law was made in order to do away with ambiguities and to take advantage of the experience gained in the administration of the law during the four years of its existence. The new law (Chapter 212, Laws of 1917) while less exacting in certain respects, is more practicable. It demands of the physician only a "thorough" examination of the applicant and "the application of the recognized clinical and laboratory tests of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary." It also provides for a free microscopical examination for gonococci at the State Laboratory of Hygiene or a Wassermann test for syphilis

at the State Psychiatric Institute upon the request of any physician in the state.

The more important sections of the law now read as follows:

"All male persons making application for license to marry shall at any time within fifteen days prior to such application be examined as to the existence or nonexistence in such person of any venereal disease, and it shall be unlawful for the county clerk of any county to issue a license to marry any person who fails to present and file with such county clerk a certificate setting forth that such person is free from venereal diseases so nearly as can be determined by a thorough examination and by the application of the recognized clinical and laboratory tests of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary. When a microscopical examination for gonococci is required such examination shall upon the request of any physician in the State be made by the State Laboratory of Hygiene free of charge. The Wassermann test for syphilis when required shall upon application be made by the Psychiatric Institute at Mendota free of charge. Such certificate shall be made by a physician, licensed to practice in this State or in the State in which such male person resides, shall be filed with the application for license to marry, and shall read as follows, to wit:

I,.....(name of physician) being a
physician, legally licensed to practice in the state of....., my
credentials being filed in the office of....., in the city of.....,
county of....., state of....., do certify that I have this
day of....., 19...., made a thorough examination of.....
(Name of person) and believe him to be free from all venereal diseases.
.....(Signature of physician).

"Such examiners shall be physicians duly licensed to practice in this State, or in the State in which such male person resides. The fee for such examination, to be paid by the applicant for examination before the certificate shall be granted, shall not exceed two dollars. The county or asylum physician of any county, shall, upon request, make the necessary examination and issue such certificate, if the same can be properly issued, without charge to the applicant, if said applicant be indigent."

Other items of the law (Section 2339, m, laws of 1913) pertain to the settlement of disputes, appeals, persons who leave the State to escape the provisions of the law, and penalties for county clerks who unlawfully issue licenses, or for physicians who make false statements in their certificates. Since these provisions are of secondary interest for our purpose they need not be reviewed.

An additional law (Chapter 783, Laws of 1917) passed in 1917 requires that any person (man or woman) who has ever been affected with gonorrhoea or syphilis must secure from one of the state laboratories a certificate setting forth the fact that the necessary examinations and tests have been applied and that the candidate is not in the infective or communicable stage of either of these diseases.

There can be no doubt that, in general, public opinion in Wisconsin is strongly in favor of these measures. This is reflected in the legislative vote which was almost unanimous for the original law. One not infrequently reads in articles written by supposed authorities who do not live in the State, about the folly or the collapse of the Wisconsin prenuptial physical inspection law. As a resident of the State who, though originally somewhat skeptical as to the advisability of the measure, has been following its working with the keenest interest, I find myself greatly puzzled to know the source of information that enables these nonresidents to speak with so much assurance. Certainly they do not get their knowledge from the State Health Officer, the one person who knows in greatest detail how the law is working out, for he feels very well satisfied with the measure and is convinced that it is accomplishing much good. It has already prevented the marriage of a considerable number of people infected with venereal disease in a communicable form.

The charge that craftily disposed candidates can evade the provisions of the law is doubtless true, but this same indictment can be brought against almost any law including those concerning murder, arson, or theft. Nevertheless we do not repeal these laws on this account. It is only fair to look at what a law accomplishes as well as at what it does not.

A small number of physicians still oppose the statute but the noise they make is out of all proportion to their relative numbers. Most of the physicians of the State are apparently trying conscientiously to carry out the intent of the enactment. An occasional applicant for a marriage license resents it, but such cases are decidedly in the minority. Opposition has about disappeared.

Most applicants for a marriage certificate are strongly in accord with the purpose of the requirement and many who have suffered from venereal disease welcome the opportunity of finding just what their condition is and of gaining information about matters of which they were ignorant. Even men from other States, contemplating marriage, have made application to the Wisconsin State Health Officer for examination. In fact, it is not unusual to have young men apply for a preliminary examination long in advance of marriage so that they may have ample time, if necessary, for medical treatment.

Undoubtedly education of the public to the dangers of active and latent venereal diseases is one of the chief benefits of the law. Most men are neither vicious nor intentionally dishonest in marital

matters. They are ignorant. Hence the good that can be accomplished by education alone can scarcely be over estimated.

Of the practicability of the "compulsory reporting" feature specified in one section of another law relating to social disease, passed by the legislature of 1917, there is much less unanimity of opinion among the physicians with whom I have been able to confer. The State Health Officer believes that it will work out satisfactorily. The law requires that "Any physician licensed to practice medicine in this State who is called upon to attend or treat any person infected with gonorrhoea or syphilis in its communicable state, shall report to the State Board of Health in writing, at such time and in such manner as the State Board of Health may direct, the age and sex of such person and the name of the disease with which such person is afflicted. Such report shall be made on blanks furnished by the said Board."

This statute further requires that such venereal patients take treatment until the disease in question is no longer communicable and makes provision for their restraint for treatment in a county or State institution if they refuse to take treatment otherwise. Each county of the State is required to make provision for adequate free treatment of indigent individuals. The State Board of Health is also directed to prepare for free distribution upon request among the citizens of the state, printed information and instructions concerning the dangers from venereal diseases, their prevention and the necessity for treatment.

The law (Section 561jm of the statutes) authorizing the sterilization of criminals, insane, feeble minded and epileptic individuals was passed during the legislative session of 1913. It reads as follows:

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. There is added to the statutes a new section to read: Section 561jm. The State Board of Control is hereby authorized to appoint, from time to time, one surgeon and one alienist, of recognized ability, whose duty it shall be, in conjunction with the superintendents of the state and county institutions who have charge of criminal, insane, feeble minded and epileptic persons, to examine into the mental and physical condition of such persons legally confined in such institutions.

2. Said board of control shall at such times as it deems advisable submit to such experts and to the superintendent of any of said institutions the names of such inmates of said institution whose mental and physical condition they desire examined, and said experts and the superintendent of said institution shall meet, take evidence and examine and report said mental and physical condition to the said State Board of Control.

3. If such experts and superintendent unanimously find that procreation is

inadvisable it shall be lawful to perform such operation for the prevention of procreation as shall be decided safest and most effective; provided, however, that the operation shall not be performed except in such cases as are authorized by the said Board of Control.

4. Before such operation shall be performed, it shall be the duty of the State Board of Control to give at least thirty days' notice in writing to the husband or wife, parent or guardian, if the same shall be known, and if unknown, to the person with whom such inmate last resided.

5. The said experts shall receive as compensation a sum to be fixed by the State Board of Control, which shall not exceed ten dollars per day and expenses, and such experts shall be paid for the actual number of days consumed in the performance of their duties.

6. The record taken upon the examination of every such inmate shall be preserved and shall be filed in the office of said Board of Control at Madison, Wisconsin, and semiannually after the performing of the operation, the superintendent of the institution wherein such inmate is legally confined, shall report to said board of control the condition of such inmate and the effect of such operation upon such inmate.

7. The State Board of Control shall report biennially in its regular biennial report the number of operations performed under the authority of this section and the result of such operations.

8. There is hereby appropriated out of the State treasury, not otherwise appropriated, a sufficient amount of money to carry into effect the purpose of this section not to exceed two thousand dollars.

Section 2. This act shall take effect upon passage and publication. Approved July 30, 1913."

The State Board of Control is proceeding with great caution in exercising the authority granted it by the legislature in this statute. Shortly after the law was enacted, Dr. Maude R. Williams, a licensed physician and surgeon, was appointed to make a careful study of certain cases in the State Home for Feeble-minded. Not only were the patients themselves examined but their family history was traced as far as possible. In certain cases where duly constituted authorities pronounced procreation inadvisable (Cf. Thirteenth Biennial Rep't of the State Board of Control of Wisconsin, p. 6) sterilization was practised according to the specifications of the law. The operation of vasectomy was performed upon twenty-two males during the months of July and August, 1915, and that of salpingectomy upon thirty-five females during the summer of 1916. Up to date about one hundred feeble-minded individuals have been so treated, of whom some sixty were women. All such patients have made speedy recovery and no bad physical effects have resulted. All are being kept under observation and reports are being made to the State Board of Control from time to time. No serious opposition to the operation for sterilization has been encountered. On the contrary, some of the more intelligent parents of the patients have

avored it. When possible, individuals so treated are removed from the institution to private homes in which good treatment is assured, thus making room for others who are on the long waiting list.
