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MARRIAGE LAWS AND CUSTOMS
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The subject matter of eugenics is offspring and offspring imply parents. For legal and other reasons society regards a knowledge of parentage as very important. Marriage is society's method of securing that knowledge. Incidentally the arrangement of marriage is of value for eugenical studies, in fact the principles of eugenics could hardly be established in its absence.

But society asks not only for a registry of matings but seeks to control, in some degree, the nature of the matings. On the one hand it seeks to protect monogamy and the young from the legal consequences of marriage. On the other hand, the nature of control measures, roughly, the result of society's experience that certain matings result in undesirable offspring. Let us, accordingly, examine some of these laws.

The most widespread marriage regulation of biological import in modern civilized states is that which limits the relationship of those whose mating may receive a legal sanction. In practically all of the States of the Union marriage of brother and sister, of parent and child, even of grandparent and grandchild is forbidden, and it is sometimes expressly stated that such marriages have no legal standing. In most States the marriage of uncle and niece, or of aunt and nephew, are forbidden. When it comes to the mating of cousins, legislators have been in much greater doubt. About a third of the States forbid such marriages, and these are chiefly in the western, or more recently settled, territory. In most European States, I am informed, no legal limitation to the marriage of cousins exists.

Let us now consider in how far there is a biological justification for these laws. I know that there are those who hold that the mating even of brother and sister for generations may result in offspring without blemish. We are referred to the Incas of Peru, about whom we know little in detail, and to the Ptolomies, of whom we know a little more, but not as much as a well--trained field worker of the Eugenics Record Office would discover in two or three days. The last Cleopatra, the daughter of

a brother and sister, is pointed out to us as the great argument against the evil effects of incestuous marriages. That she was the crowning flower of a beautiful race may be admitted, but is there any doubt that, were she living to-day, she would be placed in the manic--depressive ward of a hospital for the insane, with further history of paranoia and erotomania? But we, too, have histories of incest, brought in by our field workers histories of families brought up, not in palaces, but in hovels in the woods. For example, a criminalistic man had, by an unknown woman, a number of boys and girls. One of the boys, who was a drunken, feeble--minded fellow with criminalistic tendencies, has had by his own sister a daughter who is a drunken epileptic. This daughter by her own father has had four children of whom one is epileptic, two are imbecile, and the fourth was an encephalic monster who died at birth. I would undertake to produce two cases of this general sort for each case that may be offered of the "romantic," "vivacious" product of a brother and sister mating. And can we doubt that a sober minded people have been impressed by such cases as I have cited, have stored them up in their memory as part of experience, and have crystallized that experience in laws against incest?

And how about the marriage of first cousins? Are the laws that forbid such marriages justifiable? Our modern knowledge of heredity leads to the conclusion that cousin marriages (like the marriage of sibs, possibly) is not injurious per se, but because such marriages enhance the probability that the same defect shall inhere in each of the two germ--cells that unite to start the development of the child. While the prohibition of cousin marriages is doubtless a rough eugenic measure, it were better if the prohibition were qualified somewhat as follows: " The marriage of cousins is forbidden when in the parental fraternity that is common to both, there is a case of inability to learn at school, of dementia precox or manic depressive insanity in any of their forms, of epilepsy, of congenital deafness, of albinism, or of cleft palate." Such a restriction in the application of the law might well increase the difficulty of administering it, but the law would be rendered more significant and less unjust.

A second consideration is whether any law against the marriage of cousins is enforceable. It may be argued from analogy that, just as laws against the marriage of sibs are pretty generally enforced, so may be that against cousins. But it is to be remembered that it is not the law, but early home instruction and the barriers erected at their home against sexual relations between children of a family that keeps down incest. The ever present danger of incest ensures adequate means to combat it, and these, together with a not uncommon repulsion between sibs, due to familiarity, are much more powerful than any law. But cousins usually live apart, the contempt of familiarity is not bred, and there is little precaution taken against the growth of friendliness and stronger attachments. Owing to these differences one cannot argue that a legal prohibition to cousin marriage as strong as that between sibs would result in cousin marriage becoming as rare as incest. Certainly, with the lack of social control that characterizes numerous and extensive areas of

the United States, there would be no enforcement of a law prohibiting cousin marriage; or at least such a law would not prevent cousin matings. There are island communities in the United States where practically all marriages for two generations, at least, have been cousin marriages, and, probably in four--fifths of the cases, marriages of first cousins. There are other communities--largely occupying rural valleys--where probably not half of the more or less permanent matings are solemnized or legalized marriages, and such marriages as there are are chiefly between cousins. In fact, in any fairly stable, semi--rural community, where all matings tend soon to become consanguineous in some degree, it is going to be hard to enforce so delicate a distinction as that between the marriage of first cousins and of first cousins once removed. Love laughs at locksmiths and no less love laughs at legal limitations. I have suggested above that laws might be enacted forbidding cousin marriages under certain conditions. If they could not be enforced, of what use would they be? Their value would be primarily educational, and this value would be enhanced by a penalty for every infringement of the law, such as more or less prolonged deprivation of some of the rights of citizenship. In time the reasonableness of the legislation would make a strong appeal.

The second legal limitation of a biological sort is that concerning the physical (including the mental) condition of those who contemplate marriage. Many States provide that if either party is an idiot or insane, the marriage is void, on the legal ground that such persons are incapable of making a valid contract. In not a few States paupers are permitted to marry only under restrictions, the limitation having an economic basis, namely that a male pauper cannot support a wife. In few, if any, of the States of the Union have the legislators or the people grasped the idea of restricting the marriage of the mentally or physically defective in order to diminish the procreation of more defectives. Laws against the marriage of the feeble-minded are futile in any case. For so long as a feeble--minded person is at large he will find another feeble--minded person who will live with him and have children by him. It would be as sensible to hope to control by legislation the mating of rabbits. The only way to prevent the reproduction of the feeble--minded is to sterilize or segregate them. As to the marriage of the insane, it seems doubtful if it is wise to refuse this without qualification. Two mentally normal persons who have each an insane parent are more apt to have insane offspring than an insane person who marries one in whom there is no taint of insanity. I think it might be unwise to deny to every person who has shown a tendency to manic depressive insanity in its lighter forms marriage into mentally sound stock. Further study of this matter is needed. The requirement of a physician's certificate as to bodily soundness, which some clergymen are requiring in the States, is primarily directed toward venereal disease and certainly has eugenical bearings. When a requirement is made of a certificate that both parties come of mentally and physically satisfactory stock, a still more important step in eugenics will have been taken.

Finally, the third legal limitation of a biological sort is that concerning the mixture of races. Most of the States of the Union have

laws declaring marriages void when contracted between a white person and a negro or the descendants of a negro for a certain number of generations, usually three; i.e., "having one--eighth of negro blood." But the law of the State of Georgia prohibits for ever and declares null and void any marriage between a white person and one of "African descent." The Oregon law renders void any marriage of a white person with a person having one--fourth or more of negro, Chinese or Kanaka blood, or any person having more than one--half Indian blood.

The biological basis for such laws is doubtless an appreciation of the fact that negroes and the other races carry traits that do not go well with our social organization. For the Ethiopian has not undergone that selection that in Europe weeded out the traits that failed to recognize property rights, or that failed to give industry, ambition and sex control. The Southerner looks aghast at the possibility that these traits shall become disseminated throughout his social organization and become part and parcel of the make up of his descendants. So with the cruelty of the Indian. These fears are justified, but the cure is inadequate. Already the south is full of persons of one--eighth negro blood, whose (illegitimate) children may legally marry with whites. The Georgia law which denies marriage of white persons to descendants of blacks, however remote, is equally futile. Many a child arises in the third or later generations that by no test shows evidence of "African descent." How unjust the Missouri law that provides that the proportion of negro blood is to be determined by the jury from the appearance of the person! The south, indeed, has a problem in its huge "feeble--minded" coloured population; but the problem is of the same order as that in the north and in England, and the solution is this: Forget unessentials, like skin colour, and focus attention on socially important defects. Then, by sterilization or segregation, prevent the reproduction of the socially inadequate. Thus will the mentally incompetent strains be eliminated and the good physical traits of some of the black races be added, as a valued heritage to enhance the physical manhood of the south.

I feel sure that if law will take lessons from biology many of the disasters that have been feared may be averted.

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