

Segregation's Science:
The American Eugenics Movement and Virginia, 1900–1980

(In Two Volumes)
Volume II

Gregory Michael Dorr
Darien, Connecticut

A.B., Dartmouth College, 1990
M.A., University of Virginia, 1994

A Dissertation presented to the Graduate Faculty
of the University of Virginia in Candidacy for the Degree of
Doctor of Philosophy

Department of History

University of Virginia
August, 2000

CONTENTS

Volume I:

Acknowledgements	iv
Introduction	1
1. The Sacrifice of A Race	47
2. Breeding the Human Thoroughbred	123
3. Defending the Thin Red Line	206
4. Pecpling Virginia	306
5. Sterilize the Misfits Promptly	370
6. Mongrel Virginians	449

Volume II:

7. The New Sparta	555
8. From Human Thoroughbreds to Human Tragedy	649
9. They Saw Black All Over	708
Conclusion: I Never Knew What They'd Done With Me	787
Bibliography	801

Chapter VII: "The New Sparta"

Writing a term paper for Ivey Foreman Lewis's eugenics course, a University of Virginia undergraduate remarked, "In Germany Hitler has decreed that about 400,000 persons be sterilized. This is a great step in eliminating the mental deficient." While the student acknowledged that, "The wide scope of the law may permit it to be used politically," he remained convinced that, "the eugenic result will outweigh any evil practice, if any [should occur]."¹ A year later, in June of 1935, another student wrote,

The great American problem is the gradual amalgamation, now in progress, of the various and widely differing races which occupy our land. All who have given any serious consideration to this question, uninfluenced by sentimentality or self-interest are compelled to admit that the intermixture of races as diverse as the white and the Negro certainly injures or destroys the most specialized qualities of the white race....the only hope, therefore, of slowing up the process of amalgamation is to prevent racial intermarriage.²

Although it is difficult to gauge the "true beliefs" of the students—who may simply have been writing to please Lewis and earn a grade—we can safely assume that these statements accurately reflect the tenor of Ivey Lewis's teaching in the 1930s. A decade after the passage of Virginia's sterilization bill and Racial Integrity Act (RIA), Lewis was still teaching his students about the value of eugenics as a social policy. The so-called feeble-minded still menaced civilization, and Lewis and his students identified in Hitler's

¹This paper was written in May of 1934, just ten months after Adolf Hitler signed Nazi Germany's "Law for the Prevention of Hereditarily Diseased Offspring." HB, "Eugenical Sterilization (May 20, 1934)," Box 1, Term Papers Collection 7568, Special Collections, Alderman Library, University of Virginia, Charlottesville, page 15. [Hereinafter cited as TP, Box number, page number. All student authors will be referred to by initials.] For the text of the Nazi law, its legislative history, and medical diagrams and instructions for performing vasectomy and tubal ligation, see Arthur Gütt, Ernst Rüdin, and Falk Rutke, *Zur Verhütung erbkranken Nachwuchses: Gesetz und Erläuterungen* [For the Prevention of Hereditarily Diseased Offspring: Law and Commentaries], Zweite, neubearbeitete Auflage [Second, newly-revised edition] (München: J. F. Lehmanns Verlag, 1936). A copy of this volume resides in the University of Virginia Library. Whether it was acquired by the university eugenicists is unclear, but unlikely. It is probable that the book came to the University with a large number of Nazi tracts acquired by University of Virginia historian Oron J. "Pat" Hale. Hale, an historian of Germany, served in the U.S. Army during the war and as a member of the Allied military government overseeing German reconstruction after the war. He collected large numbers of important historical documents and shipped them back to the university library.

²NZF, "Race Mixture (June 1935)," TP, Box 2, 1.

eugenic program a more aggressive version of that pursued by many American states.³

Moreover, Lewis and his students remained conscious of racial mixing as another crucial aspect of the United States' purported eugenic dilemma. These two papers are representative of the tenor and thrust embodied in the twenty-seven term papers remaining from Lewis's class.

These papers, along with the other activities of Virginia's eugenicists inside and outside the academy during the 1930s, provide an index of the state's eugenic devotion. The extant evidence points suggestively toward the continuing salience of eugenic beliefs in shaping Virginia's educational, social, and political structures during the 1930s and 1940s. Not only did Virginia eugenicists continue to patrol the fit/unfit, normal/feeble-minded, and white/black borders of segregation, but they also stepped up their surveillance and began monitoring the interactions between Jews and gentiles. Administrators at Virginia's colleges and professional schools, particularly the University of Virginia, mounted efforts to restrict Jewish enrollment. This move reflected not only long-standing anti-Semitism, but also an eugenic evaluation of the biological worth of Jewish students.

Although this increased vigilance regarding Jew/gentile intermingling roughly paralleled the rise of Nazism and Nazi eugenics in Germany, it would be a vast and inaccurate overstatement to claim that all Virginia eugenicists were becoming fascists or Nazis.⁴ Delineating the similarities and differences between Virginia and Nazi eugenicists does not reduce the two groups to identity. Instead, revealing the contact points between the two groups underscores how the eugenic metaphor could be invoked, under broadly similar

³By 1931, thirty states had passed sterilization laws at one time or another. Twenty-seven of those laws remained on the books, although they were not all actively enforced. Mark Haller, *Eugenics: Hereditarian Attitudes in American Thought* (New Brunswick, NJ: Rutgers University Press, 1963), 137.

⁴Robert Proctor's fascinating studies detail the rise of eugenics and physical anthropology in Germany, and the subtle shifts from a pre-Nazi to a Nazi eugenics. He also compares the German and American eugenics movements in this period. See especially, Robert Proctor, "Eugenics Among the Social Sciences: Hereditarian Thought in Germany and the United States," in JoAnne Brown and David K. van Keuren, *The Estate of Social Knowledge* (Baltimore and London: The Johns Hopkins University Press, 1991), chapter 9, particularly 186–89.

circumstances, to buttress each culture's social order. Eugenics anchored Virginians and Germans adrift in the Great Depression's socio-economic turmoil. It provided them with a scientific explanation of the catastrophe that absolved them of guilt and provided convenient scapegoats. Rather than undermining the eugenicists' biological explanation of the socio-economic order, for many Virginians the onset of the Great Depression confirmed their deepest eugenic fears. America's economy had not failed, they argued, as a result of reckless speculation by genetically-gifted white Nordics. Instead, the increasing societal drag of the "manifestly unfit" triggered the devastating depression. Eugenic theory coupled with rising anti-radicalism within Virginia's educational and social structure to quash "liberal" responses to the social dislocations precipitated by the crisis. Rather than advocating social welfare measures for all, the eugenicists acknowledged the "salubrious" effects of the Depression: it skimmed the human dross from the society, pooled these individuals in easily identifiable groups, and highlighted the necessity of instituting a more vigorous eugenic program to prevent the recurrence of a similar catastrophe.

More significant still, the continuing political influence of Virginia eugenicists demonstrates that the state's experience varied from that of many others. The rise and fall of mainline eugenics in Virginia did not precisely parallel the trajectory of mainline eugenics at the national level, and it did not occur in lockstep with the ascension and destruction of the Third Reich.⁵ The rise of fascist dictatorships in Germany and Italy, with their attendant racial doctrines, initially appealed to many Virginia eugenicists. Extreme eugenicists like Cox, Plecker, and Powell would come closest to adopting Nazi attitudes. Patriotism prompted other mainline eugenicists, like those at the University of Virginia, to admire the Nazi program's efficiency, but to eschew the totalitarian doctrines of fascism. On some level, these individuals understood that Nazi and American eugenics promoted quite different political ends, despite their similar scientific justifications. In the end,

⁵For a detailed discussion of historians' periodization of the eugenics movement, see the Introduction.

American eugenicists, especially those in Virginia, were able to reconcile the dichotomy between "rugged individualism" and statist intervention in the name of the common weal. This ideological rapprochement helps to explain how, even after the revelation of the Holocaust in 1945, Virginia eugenicists could differentiate themselves from Nazi eugenicists, even as they continued to sterilize the mentally retarded and persecute Jews and racial minorities. Other Virginians adopted the more moderate, "reform eugenics" advocated by men like Frederick Osborn, particularly after 1940. This group downplayed or dropped race as a significant marker of genetic worth. Still willing to declare some genes and genetic traits "fit" or "unfit," the individuals contributed to the durability of applied negative eugenics in Virginia.

The continuity of mainline belief in Virginia provides a "dramatic example of how political priorities can structure scientific priorities."⁶ By 1940, Virginia eugenicists' political and social convictions drove their scientific beliefs, and not the inverse as they claimed. Changes internal to the science of genetics had little effect on most eugenic "practitioners"—principally doctors and public health officials—and scientists in Virginia. Despite the fact that Charles Davenport retired in 1936, and the Carnegie Institution first deposed Harry Hamilton Laughlin and then closed the Eugenics Record Office (ERO) in 1940, mainline eugenics lived on in Virginia. It assumed a more subterranean form, being taught in the classrooms, enforced through the public health department, state hospitals, and courts, but seldom discussed openly. Mainline eugenics reappeared in Virginia with the rise of massive resistance to the civil rights movement of the 1950s.

The persistence of Virginia's mainline impulse highlights the slow transformation of scientific belief. Ultimately genetic and eugenic epistemology, the canons of "truth" within each discipline, changed in response to a combination of internal developments in genetics and external developments in society. Ultimately, external developments controlled the

⁶Proctor, "Eugenics Among the Social Sciences," 175.

viability of any eugenic response. As early as 1915, the Hardy-Weinberg theorem demonstrated the near impossibility of eliminating "undesirable" genetic traits. Despite this fact, applied negative eugenics—sterilization and segregation—remained popular among scientists of every level of sophistication; indeed, the eugenic program, recast in the language of genetic load rather than "unfitness" survives today.⁷

Changes external to science ultimately had as much to do with changing scientific beliefs as any "objective" discoveries about genetics. America's overt racial eugenics—and the segregated society it helped to support, particularly in the South—increasingly clashed with more universally held social, political, and scientific standards. After 1940 most nationally prominent eugenicists edged quietly away from racialist reasoning, while still advocating the sterilization of the feeble-minded. Many Virginians did not mirror this trend, preferring the now outmoded science of the 1910s and 1920s. Within the social context of Virginia, these men could still comfortably espouse the racialist science they had long believed. The self-deceptions employed by these scientists, who attempted to recast the developments in biological science and deny changing social conditions, allowed them to hew to the older notions of Mendelian inheritance. These rationalizations reveal a great deal about how these men's political commitments shaped their scientific understanding of the world around them. As a result of the dynamic between politics and science, Virginia sterilized over 8,500 individuals, denied thousands their traditional cultural identity, and further restricted the right to marry, access to schooling, medical care, and other social services. Virginians continue to confront the legacy of these privations today.

* * * *

⁷The recent death of James V. Neel, self-proclaimed "doctor to the gene pool" reminds us of this continuity. Neel was one of the pioneering geneticists who shifted attention from "defect" in the individual to the occurrence of genetic defect in populations (the so-called "genetic load" borne by any group). The Human Genome Project is another offshoot of the desire to rid humanity of genetic "defect."

"Shooting the Mad Stork": Teaching and Learning Eugenics in the 1930s⁸

Harry Hamilton Laughlin, director of the Eugenics Record Office (ERO), wrote a memorandum concerning "Eugenics in the College" in 1933. In this memo, Laughlin argued that three periods of life were especially suited to eugenic education. Laughlin believed the first period, early childhood, to be "the time for the determination of juvenile promise in reference to the best education, and for the diagnosis of any defect which needs special treatment." During this stage children were the passive recipients of their elder's eugenic judgments, which then conditioned the options available to the child. Laughlin's second period, "during college life, or the equivalent years in non-college students," were important because, "These years are essentially those of mate selection." Eugenical education for college students, "should mature into an appreciation of eugenical values." Invoking the eugenic metaphor, Laughlin argued that young adults should be taught that, "Blood should be an asset in mate selection, along with wealth, social position and charming personal qualities." Students would be persuaded by mentors and constrained by laws during this phase of eugenics education. Eugenic legislation was not enough, in Laughlin's eyes, to convince people of the importance of heredity. Instead, he argued, "a long period of eugenical education will be required to give blood this social position. The first specialized and formal course in eugenical education should come in college, but eugenical education should be inculcated from a much earlier date."⁹ Laughlin's message was not lost on Virginia eugenicists, whose southern culture had long valorized "blood" and "kin" as essential factors in determining mate selection. The necessity and desirability

⁸Much of the following material appears, in a different form, in Gregory Michael Dorr, "Assuring America's Place in the Sun: Ivey Foreman Lewis and the Teaching of Eugenics at the University of Virginia, 1915-1953," *Journal of Southern History* 66 (May 2000): 257-296.

⁹Harry Hamilton Laughlin, "Memorandum on Eugenical Education (1933)," 1, in Harry Hamilton Laughlin Papers, Pickler Memorial Library, Truman State University [formerly Southeast Missouri State University], Kirksville. [Hereinafter referred to as Laughlin Papers. Photocopies in author's possession.]

of eugenics remained evident in university instruction from William Henry Heck in 1905 through the second wave of University eugenicists who taught through the 1950s.

As the 1920s came to a close, the University of Virginia stepped up the number of offerings in eugenics. All the instructors discussed in chapters two and three continued to offer their courses, which covered eugenics explicitly or incidentally. Beginning in 1928, the University also offered courses in eugenics through its extension department. Taught by George Warren Chapple of the State Normal School at Harrisonburg (now James Madison University) and George Gose Peery of Roanoke College, the courses covered evolution, heredity, and eugenics. Discontinued briefly during the low-point of the Depression from 1931 to 1934, the course made a resurgence in 1935 and was offered every year until 1938. During the first period, the description of the two-part course did not explicitly invoke the word eugenics. The first part of the course, *Biology and Human Welfare*, however, covered most major eugenic topics: "biology and man's origin, biology and racial development, biology and the 'superman,' biology and war, biology and the state, biology and the school, biology and the home, biology and health, biology and long life, biology and food supply." The missing issue, miscegenation, was picked up in the course's second half, *Heredity and Environment*. This portion of the course, which presented the material "in a popular way rather than a technical way," addressed the "mechanism of heredity" in humans and then included "a study of such subjects as race deterioration, possibilities of improving the race, individual improvement, conflict between social and germinal heredity, man's unused resources or talents, the problem of population," and finally, "the problem of racial crosses." Dr. Peery felt that, "This course should be of special interest and value to teachers, parents, physicians and all others

interested in the progress of the human race."¹⁰ These courses opened the teaching of eugenics to a much wider audience than that reached through the traditional college courses offered to enrolled students.

Students within the University of Virginia continued to learn eugenics, too. Surveying the condition of America in 1931, one of Ivey Lewis's students wrote, "the future holds the indication that the population, in relatively few years, will be poisoned by these border line and feeble-minded individuals, and that average intelligence will take a drop." Despite the fact that 27 states had active sterilization laws, America was not applying the eugenic remedy rigorously enough, according to this student. America needed to take better aim when "shooting the mad stork" or else succumb to the "menace of the feeble-minded." Lewis found the youngster's analysis so compelling that he awarded the paper an "A" grade—an exceedingly rare commodity in any of Lewis's classes.¹¹

The surviving twenty-seven term papers from Ivey Lewis's eugenics course reveal the tenor of Lewis's teaching and the persistence of a strong mainline tradition even in the wake of the Great Depression. Although Mark Haller and Kenneth Ludmerer both claimed that the Great Depression retarded eugenic programs, the evidence actually supports the opposite conclusion.¹² Virginia maintained its eugenic sterilization rate throughout the 1930s, as eugenicists blamed the depression on the economic drag created by the exploding

¹⁰These courses are described in the *University of Virginia Record Extension Series* for 1927–1930 and 1935–1938. During the second period, the course was a three part series that began with evolution, moved to genetics, and finished with "Eugenics," described as the "Application of heredity to human problems."

¹¹HIM, "Shooting the Mad Stork: A Paper on the Present Status of Human Sterilization," TP, Box 2, 2.

¹²Haller, *Eugenics*, 180–81; Ludmerer, *Genetics and American Society*, 127. More recent scholars all debunk this myth. See Diane B. Paul and Hamisch G. Spencer, "Did Eugenics Rest on an Elementary Mistake?" in Diane B. Paul, *The Politics of Heredity: Essays on Eugenics, Biomedicine and the Nature-Nurture Debate* (Albany, NY: State University of New York Press, 1998), 128; Barkan, *The Retreat of Scientific Racism*, passim. Kevies, *In the Name of Eugenics*, 115.

number of "unfit" people.¹³ Virginia expanded its sterilization program during the 1930s, averaging 316 sterilizations yearly during the decade.¹⁴ Within the educational arena, Ivey Lewis clearly taught his students the desirability of eugenic interventions. Judging from student term papers, they heard and understood his message, although we cannot be certain they all shared his absolute conviction.

The term papers cover the full spectrum of eugenics-related topics.¹⁵ From "Birth Control" to "Quality as a Biological Problem: Intelligence," the papers approach their subjects from a mainline standpoint. Only two papers waver in concluding that some form of eugenic reform was necessary.¹⁶ The papers all accept that heredity, not environment,

¹³Philip R. Reilly, *The Surgical Solution: A History of Involuntary Sterilization in the United States* (Baltimore and London: The Johns Hopkins University Press, 1991), 94.

¹⁴By 1932–1933, Virginia succeeded in surpassing every state except California in cumulative sterilizations. Virginia would never relinquish this position. These figures, reproduced on pages 64 and 65 below, are drawn from Julius Paul, "...Three Generations of Imbeciles Are Enough...": State Eugenic Sterilization Laws in American Thought and Practice, 1965" TMs, p. 511–13, Historical Collections, Wilhelm Moll Rare Medical Library, University of Virginia Medical School, Charlottesville. [Copy of manuscript in possession of author.] Compiled by Paul when he was at the Walter Reed Army Institute of Research, this manuscript is a mine of accurate information gleaned from state reports and state statisticians. In the 1960s eugenic sterilization was still not completely demonized; state officials therefore responded candidly to Paul's requests for information. His statistics are by far the most accurate extant, and highlight inconsistencies in contemporary record keeping and subsequent historical studies like Reilly's *The Surgical Solution*. Other useful sources of statistics include Jonas Robitscher, *Sterilization* (Springfield, Ill.: Thomas, 1973); and Leon Whitney, *The Case for Sterilization* (New York: Frederick A. Stokes Company, 1934), 302.

¹⁵Another undated list of paper topics with student names survives in Lewis's files. The thirty subjects comprising the list are particularly revealing: Heredity and Environment, Acquired Characteristics, Feeble-mindedness and its Heredity, Intelligence Testing, War, Criminality, Borderline Virginians, Insanity, General Ability, Venereal Disease, Immigration, Birth Control, Pestilence, Sterilization of Defectives, Army Tests, Twins, Human Mutations and Non-Human Mutations, Selective Breeding and Differential Birth Rate, Race Problem: Negro in History, Population Problems: General, Population Problems: American, Alcohol, German Position – 3 Branches of the White Race, Blood Groups, Catholic Church, Endocrines, Migration: Virginia, Immigration in New England, Eugenic Reform, and Juvenile Crime. See untitled list of paper topics in unfiled binder "Bibliography," Box 1, Deans Papers 5119, Special Collections, Alderman Library, University of Virginia, Charlottesville.

¹⁶Of the two equivocal papers, only one remains ambivalent to the end. See, SR, "The Population Problem -- A Summary (May 29, 1930)," TP, Box 2; and LML, "The American Race Problem (undated)," TP, Box 1. SR's name, clearly of southeastern-European ethnic derivation, may indicate the grounds for his objection to Lewis's judgment of immigrants. Interestingly, this is one of two papers to score "Excellent, Excellent @ 98." Of the 27 papers, 6 deal with miscegenation or the race problem, 5 with sterilization, 4 with the inheritance of intelligence and/or feeble-mindedness, 4 with immigration, 2 with the heredity/environment question, 2 with birth control/birth rates, 2 with the population problem, and one each with militarism and human evolution.

determines human potential. "Good environment will give good heredity a chance to express itself; but you cannot produce greatness from poor heredity," one student declared.¹⁷ The papers also contend that modern society, through medical intervention and humanitarian sentiment, succeeded in short-circuiting natural selection. As a result, "The superior strata of society are dying out while the lower increase causing a regression in stock which results in the downfall of civilization."¹⁸ A millennial tone characterizes all the papers, as if the students viewed mankind facing a choice between progress and catastrophe. Eugenics offered the solution because, "The betterment of the individual [in genetic and socio-economic terms] follows from the betterment of the group via eugenics. The eugenist has an idealistic, broader view of humanity than the doctor's individual, humanitarian view."¹⁹ The papers reflect mainline arguments that emphasized corporate consciousness over individual liberty. Only by placing concern for society over concern for the individual could America avoid "race suicide."

In advancing the race suicide thesis, which held that the unfit were "outbreeding" the fit, the papers reveal their authors' elitism and concern with issues of class, political economy, and race. The papers defend the notion that hierarchy in society is a biologically determined outcome based on heredity. According to the students, the best hereditary stock resides largely in the upper class, "proving" that success is an index of hereditary gift rather than environmental conditioning. The differential birth rate—more births in the lower than the upper class—presaged dire consequences. William Bennett Bean, whose father Robert Bennett Bean was a leading American eugenicist on Virginia's medical

¹⁷WD, "Heredity v. Environment as Portrayed by Identical Twins (undated)," TP, Box 1, 5–6. See also, KHB, "Quality as a Biological Problem: Intelligence (undated)," TP, Box 1, 3; EFG, "Sterilization for Human Betterment (undated)," TP, Box 1, 1–2.

¹⁸KHB, "Quality as a Biological Problem," 1–2, quotation 4.

¹⁹ESH, "Birth Control (undated)," TP, Box 1, 10 [emphasis in original].

faculty, argued, "Sterilization is not yet general enough to be really effective. The result is that the lower classes and more especially the positively undesirable elements of our society are increasing more rapidly than the so called upper class. This points definitely to race extinction."²⁰ Another paper discussed the Nazi eugenics law. Writing in 1935, a year after the paper quoted in the introduction to this chapter, this student also hailed the Nazi's mass sterilization program. "[W]e can but believe that such a program, carefully and conscientiously carried out in this nation, free from politics and false assumptions, would result in a few hundred years in a healthier and happier America," the student opined.²¹ In an even more chilling missive, Dr. Hans H. Heyn, a former student who worked under Lewis and took a doctorate in plant genetics under Orland E. White, wrote back to his mentors, "I don't know what conception about Hitler and his new regime you have by now. I want to say to that [sic] only a few things: there is absolute personal security for foreigners here (Jews of course are less desirable).... You won your bet when you said that I would be wearing the brown shirt pretty soon; I wear it and I am proud of it. I am a member of the S.A. (Stormtroops) too."²² Heyn had graduated from eugenics student, to eugenics supporter, and then on to eugenics enforcer.

²⁰William Bennett Bean, "Population (1930)," TP, Box 1, 26. Lewis rated Bean's paper "Excellent. Excellent. @ 98." The Beans lived next door to the Lewises and remained close family friends.

²¹PH, "Sterilization and Society (June 1935)" TP, Box 1, 21. H. H. Laughlin and many other mainline eugenicists were impressed with Nazi racial programs. See Lombardo, "Three Generations, No Imbeciles," (p. 31n6 6, and, p. 50n108); and Kevles, *In the Name of Eugenics*, (p. 347n21). Only two papers seem to acknowledge the questionable nature of equating economic success with desirable hereditary selection. ESH, "Birth Control," 14; and, LML, "American Race Problem," 16-17. Both equivocate, then affirm the proposition. While Lewis did not directly lobby for Virginia's 1924 sterilization law, he clearly favored sterilization as a method for controlling the unfit. Lewis generally kept politics at arm's length, afraid that direct involvement would tarnish his status as a "disinterested and objective" scientist.

²²Heyn studied at Virginia from September of 1930 until September of 1933. Dr. Hans H. Heyn to Orland E. White, February 9, 1934, "Correspondence: Ha-Hey (1922-1954)" folder, Box 4, Orland E. White Papers RG 21/66.831, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as White Papers.] Heyn's letter makes clear that he was won over to the Nazi program. "Studying Hitler one cannot but admire this man, the little Austrian corporal. I write you this not because I have to. You know my attitude was not decidedly pro-Hitler. But now, after I have seen with my own eyes what he has meantime done for Germany, so is this my firm conviction." Post-war

Student papers, like the eugenical propagandists' tracts, masked cultural value judgments as scientific analyses of "objective" conditions. Lewis's lectures, and the texts he recommended, lent the imprimatur of scientific authority and value-neutrality to students' prejudices. Thus, the students' papers remained congruent with leading eugenic theories, Lewis's own expressed opinions, and their own interest in strengthening the segregated and stratified South.

Perhaps these responses are not surprising. After all, as college students in an era when higher education was far less universal than today, these students most likely identified themselves as elites—whether or not their families' economic background qualified them as such. Students probably found it more comforting to believe their social position resulted from superior genetic make-up, rather than as the effect of social prejudice and class control. Such a teleology provided these students with a scapegoat for social problems, particularly evident in the papers that were written during the Great Depression. Four papers strongly maintained that the economy did not fail because of reckless speculation by the worthy upper-class. Rather, the economic order toppled as a result of the destabilizing effect of a massive influx of inferior, European workers combined with

correspondence between Heyn and the University of Virginia faculty shows that he worked in an agricultural laboratory throughout the war. His letters, however, bear witness to the dynamics outlined in Daniel Jonah Goldhagen's controversial book *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Alfred A. Knopf, 1996). Goldhagen argues that traditional German culture predisposed those not directly involved with the Holocaust to "go along" and comply with its prosecution. I believe a similar argument can be made for America, Virginia, and the South. On this issue, see Johnpeter Horst Grill and Robert L. Jenkins, "The Nazis and the American South in the 1930s: A Mirror Image?" *Journal of Southern History* 58 (1992), 667–694. Grill and Jenkins argue that the South, as a whole, remained hostile to the Nazis. I agree with this, but would add the caveats that: 1) that animosity built over time, breaking through the desire for neutrality after 1939; and, 2) pockets of strong pro-Nazi sympathy remained in the South, in influential positions that aided the maintenance of the most strident forms of white supremacy. Heyn wrote to White at his first opportunity after the war in April of 1946. In a thinly veiled apology for the war and the Holocaust, Heyn wrote, "I do want to know how you and yours are doing, and I hope that in spite of whatever happened in Germany and whatever people in this country are supposed to be or called responsible of, you can remember me." Dr. Hans H. Heyn to Orland E. White, April 1, 1946, "Correspondence: Ha-Hey (1922–1954)" folder, Box 4, White Papers. Correspondence and receipts in White's papers show that he and other members of the biology department sent numerous CARE packages to Heyn and his family in the immediate post-war years.

the disproportionate procreation of indigenous lower classes and feeble-minded.²³ All of the papers concerning eugenic sterilization noted its economic benefits: sterilization reduced the number of unfit under state care, allowing for the "safe" return to society of sterilized but economically productive individuals. Society effectively cut off the source of the unfit and no longer bore the economic burden of institutionalizing any but the most severely mentally retarded and the insane. Without eugenics, however, the students contended that society was indeed being dragged down by the "under-man," and the under-man was increasingly of swarthy complexion and feeble-mind.²⁴ Thus, the students' perceptions of the "race problem" reinforced their fears of class differences and feeble-mindedness. While most scholars interpret eugenics as suffering from a class-bias, in America and the South, race remained as salient a concern as class.

Negrophobia and a strong undercurrent of racism spurred students' facile application of eugenic theory to racial issues and the "Negro problem." Within the category of race, some of the papers dealt primarily with the different white "races."²⁵ This assumption reflected both Lewis's and the authors' preoccupation with sex across the various "color lines." "The fear of Negro assimilation—bringing with it a distracting force from the standpoint of intelligence—is dreadful enough," wrote one student, but, "the prospect of recombination

²³IB, "The Immigration Question (undated)," TP, Box 1, 12–13; ROC, "Immigration from Europe (undated)" TP, Box 1, 1–2, 5–6, and 12–14; and, ARF, "The Immigration Problem (undated)," TP, Box 2, 5–7; and JP, "Immigration Statistics (undated)," TP, Box 2, 10–12. Although these papers are undated, they refer directly to the depression and their authors graduated in 1935, 1936, 1934, and 1930 respectively. McLane Tilton, *Directory of the Living Alumni of the University of Virginia, 1931* (Charlottesville, Va., 1931); and, Alumni Association of the University of Virginia, *Alumni Directory 1981*, (White Plains, N.Y., 1981). Two of these students became physicians; one became a nurse. One wonders how eugenics influenced their professional practice.

²⁴Stoddard, *The Revolt Against Civilization*. Stoddard coined the term "under-man" to describe eugenically unfit individuals who became socialist leaders or fell prey to radical appeals.

²⁵Mark Haller comments, "Having established the importance of heredity in general, racists could then proceed to describe, in impressionistic fashion, the major characteristics of particular races. . . . Even the word race, as some acknowledged, was often used to refer to national, language, or religious instead of biological groups." Haller, *Eugenics*, 146. Student papers reflect the eugenicists' loose conception of race.

of poor qualities resulting from immigrant intermarriage . . . is just as bad."²⁶ Assimilation with inferiors—of whatever color—promised dysgenic consequences for the race. Black assimilation, however, posed the worst possibility of all.

Judging from the six papers dealing with the "Negro Problem," these students perceived it as being "of immense importance to the future of the United States."²⁷ One student agreed that "gradual amalgamation" was a "great American problem" and that racial mixture "certainly injures or destroys the more specialized qualities of the white race."²⁸ To establish black inferiority, many students invoked traditional shibboleths. Focusing on perceived African-American "laziness", another student wrote, "the negro does not have a place in the sun [a metaphor for being among the favored races] because he has always sought the shade, ostensibly, I presume to rest there."²⁹ Another paper used a time-honored formulation to emphasize black inferiority and simultaneously reinforce white superiority. "The civilization of the Negro has always been possible only because of the

²⁶ARF, "Immigration Problem," 12.

²⁷Bean, "Population," 5. Context could increase the attention students focused on racial problems. Reacting to the sensational Scottsboro, Alabama rape trials, one student wrote, "At this time when the Scottsboro trial [nine black men accused of raping two white women]. . . [is] so before the public, a discussion of the problem is particularly appropriate." RNW, "The Negro Question (undated)," TP, Box 2, 1. The Virginia students deviated from Edward J. Larson's description of their Deep South neighbors. Larson avers that his subjects did not see eugenics as a panacea for the race problem, assuming that cultural racism and anti-miscegenation laws operated so well that "Deep Southerners" did not fear black/white race mixing. Larson, *Sex, Race, and Science*, 2, 23, 93. Eugenacists led the push for Virginia's anti-miscegenation law, the Racial Integrity Act of 1924. The continued agitation for more stringent enforcement of the act, as well as students' preoccupation with the issue in their papers, displays Virginians' unease regarding compliance. See, Lindquist Dorr, "Arm in Arm: Gender and the Racial Integrity Act of 1924," *Journal of Women's History* 11 (Spring 1999): 143–66; and, Richard B. Sherman, "The Last Stand: The Fight for Racial Integrity in Virginia in the 1920s" *The Journal of Southern History*, 54 (February 1988): 69–92. Larson notes that the paucity of resources in the Deep South limited sterilization to the white institutional population, excepting South Carolina's sterilization of African American women. Edward J. Larson, *Sex, Race, and Science: Eugenics in the Deep South* (Baltimore and London: The Johns Hopkins University Press, 1995), 4–17, and 155. Virginians, however, sterilized African Americans in segregated institutions. Eirik Himstedt, "Not for Their Own Good: African American Mental Health and Eugenic Sterilization Programs in Virginia" (M.A. thesis, University of Virginia, 1995). Phillip R. Reilly states that sterilization rates at African American institutions in Virginia equaled the rates at the various white institutions. Reilly, *The Surgical Solution*, 138.

²⁸NZF, "Race Mixture," 1. He offered a two-part answer: laws against racial intermarriage, and the application of eugenic practices to the black population.

²⁹RNW, "Negro Question," 8. And, LPR, "The Race Problem in America (undated)," TP, Box 2, 4.

white. The better the white civilization, the more the Negro would be benefited. Racial integrity is, therefore, not only of the greatest importance to the Caucasian but also to the Negro."³⁰ This student thus characterized blacks as at worst parasites, at best symbiotic partners to a social organism dependent upon the eugenic "purity" of the white race. Any miscegenation would harm the prospects of both groups.

A number of students decided that genocide represented the best solution for the "Negro problem." "Sentimentalist" social interventions succeeded in artificially prolonging the life of the unfit, particularly blacks. Fear of miscegenation and the failure of natural selection to eliminate African Americans encapsulated white Virginia's eugenic fears.³¹ Therefore, William Bean eschewed repatriation as "totally impractical," while total segregation, although "practical in the South," seemed "impossible as a nation-wide policy." So, Bean argued for the "wide dissemination of birth control knowledge" among African Americans.³² Implicit in the advocacy of birth control was a eugenically-motivated attempt to heighten the dysgenic pressure on the African American population itself, thereby eliminating the threat to white racial purity through extinction. A number of students made this contention explicitly. "If the negro is given knowledge of contraception and access to contraceptive devices, this combined with his high death rate and present declining birth rate, aided by strict racial integrity laws as now in Virginia will cause his extinction in a comparatively short time and then insure a white America and her place in

³⁰TBH, "The Negro Problem in the U. S. (undated)," TP, Box 1, 11.

³¹The papers disagree about the relative fecundity of "pure" and "mulatto" African Americans. Some papers argue for the 19th century notion of "reversions," which held that mulattos became increasingly less fertile until their progeny emerged sterile. Other papers contend that miscegenation itself raised African Americans' fertility, while some papers assert the inherent fertility of all African Americans. The continued presence of this debate reveals that the stance one took was largely determined by cultural outlook rather than scientific facts. Haller, *Eugenics*, 147-150.

³²Bean, "Population," 21-22.

the world."³³ Whether or not factual information backed these assertions regarding birth and death rates is immaterial. What is important is the student's application of eugenics as a panacea for interracial tensions; a "final solution" that would reinforce and increase inequality and segregation as necessary precursors to extinction.

Eugenics, the chimerical quest for racial purity, encouraged undisciplined theorizing that neglected the boundaries between skeptical science and biased opinion. Students readily extended their acceptance of hereditary determinism into the murky realm of public policy through eugenics. Lewis's eugenic message had three main strengths which drew students to its policy-making potential. First, eugenics gained popularity and remained remarkably coherent and consistent over time: between 1914 and 1928 the number of colleges teaching eugenics skyrocketed from 44 to 376, with an estimated enrollment of almost 20,000 students in eugenics courses.³⁴ Second, eugenics maintained an apparent flexibility in its response to social conditions at various times. During periods of crisis—World War I, the Depression Era, and in the South during periods of civil rights militancy—eugenics offered stability through its various scientifically-based "reforms." The social order did not need to be changed. Rather, people had to accept that heredity determined the social structure and use eugenics to improve the quality of people. Social improvement would necessarily follow. Any reorganization of social structure was destined to fail, the eugenicists held, because it neglected the iron rule of natural law.

Finally, eugenics' major strength stemmed from the claims it allowed its adherents to make,

³³TBH, "Negro Problem," 21–22. A number of papers recommend disseminating birth control among African Americans as a way to hasten their demise. The dissemination of birth control was illegal until the 1938 decision in *United States v. One Package Law*. After 1938 women could receive birth control from a doctor for prevention of disease only. David J. Garrow, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade* (New York, 1994), 42–48.

³⁴Steven Selden, "Educational Policy and the Biological Sciences: Genetics, Eugenics, and the College Textbook, c. 1908–1931," *Teachers College Record* 87 (1985), 42; See also Selden's book relating the interaction of eugenics and education, *Inheriting Shame: The Story of Eugenics and Racism in America* (New York: Teachers College Press, 1999).

regardless of their politics. Conservative eugenicists laid claim to the "same" legitimating apparatus that liberal social analysts, North and South, had attempted to use to advance their programs: modern, Progressive, scientific expertise. By claiming to be more "objective" and less "sentimental," and decrying "failed" environmental interventions, eugenicists attempted to elevate their "scientific" programs above those of sociologists, cultural anthropologists, social workers, and others who favored the effects of environment over heredity.

This same process characterizes the writing of prominent eugenicists such as Charles B. Davenport, Harry H. Laughlin, and eugenical propagandists like Madison Grant, Lothrop Stoddard, Albert E. Wiggam, and Earnest Sevier Cox. Yet one needs to remember that, for a time, eugenics expressed state-of-the-art scientific thinking.³⁵ Eugenicists rushed ahead because, in the words of historian Joseph Kett, "pseudo-science is often the matrix of science. Pseudo-science, in other words, is an attempt to seek too many scientific laws too quickly—not sub-science but super-science."³⁶ It is not surprising that the eugenicists' hyper-thyroid attempts to discern the hereditarian basis of society turned conservative in the South. Reinforcing the racial status quo and eliding the boundary between science and prejudice allowed southern eugenicists to justify and amplify racism. Eugenics also allowed educated white elites to avoid the choice between equally unpalatable racial liberalism and the "backward," anti-modern thinking epitomized

³⁵Anti-eugenic theory failed to gain widespread attention, until geneticist Herman J. Muller criticized aspects of mainline eugenical beliefs at the 1932 International Eugenics Congress in New York. For the ambivalence of many scientists, see Diane B. Paul, *Controlling Human Heredity, 1865 to the Present* (Atlantic Highlands, NJ: Humanities Press International, 1995), 117–121. See also Robert N. Proctor's excellent essay, "Eugenics Among the Social Sciences: Hereditarian Thought in Germany and the United States," 175–208.

³⁶Joseph F. Kett, *The Formation of the American Medical Profession: The Role of Institutions 1780–1860* (New Haven: Yale University Press, 1968), 179. Diane Paul echoes this sentiment in explaining why geneticists and eugenicists arrived at the hereditary determinist consensus. Diane B. Paul, "Eugenics and the Left," in Paul, *The Politics of Heredity*, 27–8.

by the traditionalist Vanderbilt Agrarians. As a result, Ivey Lewis—a man who thought of himself as essentially southern and quintessentially modern—acted upon his eugenical beliefs in his educational administration and theorizing. His teaching acquired a dimension beyond mere complicity in the maintenance of an unjust cultural system of racial segregation. The extent to which individuals believed and acted, over the course of many years, upon the precepts taught in Lewis's class indicates eugenics' impact on the larger society.

It is difficult to quantify the "direct effect" Lewis and the other university eugenicists had upon southern thinking and belief. Their most immediate effect was on the thousands of students they taught over the years. Lewis's students considered him a father figure, a fine teacher, and an authority on matters biological and social. An examination of the sheer number of students Lewis taught, the vocations many of them chose, and their correspondence with their former teacher begins to outline his influence. Beyond his effect on his students, Lewis's role as an influential scientist and educator brought him before diverse audiences—from fellow scientists, to university associations and alumni, to teachers' associations, and even the newspaper-reading public. Thus, evidence remains of his trans-regional influence. In evaluating this evidence, one becomes aware of the wide currency eugenic ideas held for many educated Americans throughout the first half of this century. The facility with which these individuals deployed eugenic rationales to gain their political and social ends allows historians to gauge the pervasive ideological power of this racist thinking.

During Lewis's tenure, the Biology Department at Virginia consistently produced more majors than virtually any other department in the college of arts and sciences. As Lewis noted in 1921, Biology 1 and Biology C1 "are elected by our students in considerable

numbers. The enrollment in these courses this year is about 185."³⁷ Four years later, Lewis noted that enrollment "continues to grow at an embarrassing rate" with the classes logging 273 students, though "340 students would have registered for biology if room had been sufficient to take them."³⁸ As a report to the President's Committee on Research boasted in 1952, the year before Lewis retired, "Biology has from fifty to eighty undergraduate majors each year. This is the largest number found in any school in the College of Arts and Sciences with the exception of economics." The report continued, "In the last twenty years 89 M.A. or M.S. and 49 Ph.D. degrees have been awarded. During the last year 692 students were enrolled in [biology] courses." All majors took Lewis's eugenics course, as well as all graduate students. Moreover, the 210 investigators who had spent the summer at Virginia's Mountain Lake Biological Station since it opened in 1930 also encountered Lewis, his beliefs, and teaching.³⁹ It is estimated that more than 900 students passed through Biology C1 alone during Lewis's 38 year career. If even half of this number acted upon eugenical precepts, they would represent a large contingent.

A 1928 letter reveals the strong effect Lewis's course had upon his students. Citing Biology C1 as, "a wonderful course," the student noted, "it transcends anything I have ever had or expect to have." The student even attached a characteristically millennial aspect to his praise: "The hope of the University of Virginia . . . and going further the salvation of religion" depended upon the "open minded" instruction embodied in Lewis's eugenics course.⁴⁰ This is high praise not only for the man, but also for the message. Another

³⁷Ivey Lewis to Trustees of Miller Fund, June 18, 1921, "Miller Professor 1915-1925" Folder, Box A8-18D, Blandy Experimental Farm Papers, RG 6/9/2.831; hereinafter BEF Papers, page number (if applicable).

³⁸Ivey Lewis to Judge R. T. W. Duke, June 12, 1925, BEF Papers, *ibid*.

³⁹"Report of the Miller School of Biology to the President's Committee on Research," January 11, 1952, "M-1947" Folder, Box A8-18F, BEF Papers, 1.

⁴⁰R. R. Beasely to Ivey Lewis, (?) 1928, "1928 Letters" Folder, Box 1, IFLC.

student, who wrote a paper on euthanasia for Lewis in 1939, gushed that, "Of all the courses that I took at the University, I honestly believe that I received more pleasure and knowledge from Biology C1 than any other." He asked Lewis to send him his paper because, "I am very interested in the subject [euthanasia]," and he wanted to do some additional reading. Virginius Dabney, one of the South's leading "liberals," and a friend of Lewis's sister, famed North Carolina newspaper editor Nell Battle Lewis, considered Lewis, "one of my much admired and greatly loved teachers." While Dabney was not as virulent a racist as Lewis, he championed segregation as rational management of race relations.⁴¹ Even a "racial moderate" like Dabney may have had his views influenced by Lewis's eugenics. Lewis succeeded in creating a sense of the logical relationship between science, religion, and the social order.

Charles W. Clark was another student convinced by Lewis's lessons. Clark wrote Lewis a number of letters to which Lewis apparently replied (copies of the replies do not remain in Lewis's files). Writing in 1949, Clark extolled the racial theories of Lothrop Stoddard and excoriated the service record of blacks in World War II. Clark continued,

In some recent article either Time or Newsweek stated that all races are "genetically equal," whatever that may mean. This is, of course, flying right in the face of experience—not to mention facts known to every cattle breeder. Truly the back-swing from Mr. Hitler over to the opposite extreme is something to behold! And I know of no one to combat this foolishness except the scientist—the biologist and the psychologist, aided by the publicity man and the statistician.

We are fighting with our backs to the wall and I fear that the worst is yet to come. . . I do not pretend that the South has been wise in handling its problem. . . But I still

⁴¹Virginius Dabney to Ivey Lewis, May 10, 1948, "D" Folder, Box 6, Dean's Papers; and also Virginius Dabney to Ivey Lewis, January 3, 1949, "D" Folder, Box 10, *Ibid.* Dabney's racial scruples are revealed in his book, *Liberalism in the South* (Chapel Hill: University of North Carolina Press, 1932; reprinted AMS Publishing, 1970). For similar letters speaking in high praise of Biology C1 and Lewis as a teacher, see Joseph W. Chorlton to Ivey Lewis, June 6, 1950, "C" Folder, Box 14, Dean's Papers; Reverend William H. Laird to Ivey Lewis, September 20, 1947, "L" Folder, Box 7, *ibid.*; Dietrich von Schwerdtner to IFL, January 12, 1950, "V" Folder, Box 18, *Ibid.*; and Robert B. McCormack to Ivey Lewis, (?) 1942, "Mc" Folder, Box 8, Correspondence of Dean of Students (1929-1944) RG 6/2/3299; hereinafter cited as CDS 29-44. Four boxes of this collection, representing correspondence from 1929 through 1940, have been misplaced within Special Collections and were unavailable to the author.

think we can handle it better without direction from Washington or advice from Albany, NY.⁴²

Clark's letter displays an interesting blend of southern regionalism, racism, and belief in eugenics. In a letter written five years later, shortly after the Supreme Court delivered the *Brown* decision, Clark revealed more of his belief system, emphasizing the elevated racial consciousness of the eugenics true believer.

Writing almost nine months after the landmark *Brown* decision, Clark began, "This is partly a eugenic report, at which I hope you will be pleased." He described his family of five daughters, noting, "Oddly enough when there were only four, their coloration was in exact Mendelian proportion; one blond and three little pseudo-Italians." Clark then described his wife's heritage, remarking specifically that she is of "Irish ancestry (Protestant!), with Scottish, English, Swedish, and Polish blood." After sanitizing her eastern-European blood by claiming that "one of her D.A.R. ancestors was a Polish Colonel, one of Koscuisko's staff," Clark affirmed her superior genes by certifying her intellect, "She has a master's degree from Emory, and I consider her very intelligent." Clark's description, and his need to absolve his mate of any hereditary taint, reveal the operation of eugenical considerations even in the way he approached his own family life.⁴³

Clark then returned to his racist diatribe. After restating that he remained a farmer in the Mississippi Delta, Clark remarked that he was moving away from cotton production because, "The latter simply requires too much nigger, and he is one gentleman of whom I am thoroughly sick and tired. I intend to write you more on this subject later. For the

⁴²Charles W. Clark to Ivey Lewis, March 11, 1949, "C" Folder, Box 10, Dean's Papers. Clark's first paragraph indicates that this letter is a response to an earlier letter from Lewis. See also John D. Martin, jr. to Ivey Lewis, January 16, 1948, "M" Folder, Box 7, Dean's Papers.

⁴³Charles W. Clark to Ivey Lewis, December 29, 1954, "1954 Letters" Folder, Box 1, IFLC. The nationalist justification of his wife's eastern-European blood is reminiscent of an earlier generation's rhetoric. See, Lindquist Dorr, "Arm in Arm," 151-152.

present, I am . . . shifting to white labor. Ten thousand dollar machines are simply not trusted to a chimpanzee!" Clark used his eugenic, racist sensibilities to navigate his changing relation to the land, reaffirming his identity as a "modern" southerner.

Abandoning black labor and cotton for white-controlled machinery and crop diversification represented a repudiation of the Agrarian impulse and an acceptance of modernity, all riding on his eugenically-legitimated, racist valuation of blacks. With his estimation of African Americans in mind, Clark closed the letter saying, "After I hear from you, I intend to write you at length about a certain Supreme Court decision and its possible results. Also I shall invite all the helpful suggestions you can give," presumably toward fighting desegregation.⁴⁴ Maintaining segregation was one cause Lewis understood. As he wrote in 1948, "In my opinion it would be a major calamity to try to force racial equality, and any informed citizens who love their country must realize that the color line must be maintained in spite of hell and high water."⁴⁵

Lewis also had an effect beyond his students. Following the *New York Times*' coverage of his speech, "What Biology Says to the Man of Today," in 1924, Ivey Lewis received a flattering letter from William W. Gregg, a lawyer in Elmira, New York. Gregg applauded Lewis's paper and announced that he was attempting, through his own agitation, "to make effective the segregation of the races in this country." While "Segregation in the North at least is becoming increasingly difficult" because of the number of racially-mixed "mulattoes and near whites," Gregg felt that, "some new and definite policy was imperative unless the races are ultimately to amalgamate." Lewis's advocacy of immigration restriction and antimiscegenation laws appealed to Gregg's need to defend the white race. "In view of the very general interest now displayed regarding the proposed immigration

⁴⁴Charles Clark to Ivey Lewis, December 29, 1954, "1954 Letters" Folder, Box 1, IFLC, 2.

⁴⁵John D. Martin, jr. to Ivey Lewis, January 16, 1948, "M" Folder, Box 7, Dean's Papers.

law," Gregg wrote, it would seem as if the time were ripe to advocate some definitive policy regarding our negro population." For Gregg, attempting "to preserve the race standards in this country" against inferior whites from southeastern Europe would "largely fail if ten and a half millions of negroes now here are ultimately to be absorbed into our white population, as is the declared purpose of the 'new' mulatto."⁴⁶ Lewis's speech, like similar appeals by other eugenicists, formed another filament bonding northern and southern white elites in the face of "racial peril," and black agency.⁴⁷

Almost 30 years later, in his professional swan song, performed on a national stage at the American Association for the Advancement of Science (AAAS) annual convention, Lewis incited a national controversy. Lewis's final address as Vice-President of the AAAS and President of its botany section, entitled "Biological Principles and National Policy," sounded eugenical themes, outraged listeners, and caused the AAAS to break precedent and refuse to publish his speech in the Association's journal, *Science*. Lewis argued that, "In general those who contribute least to the general welfare have the largest families," rehashing the "race suicide" argument of old. "Selection of the worst rather than the best as parents of the next generation simply flies in the face of biological law and will surely bring deterioration."⁴⁸ Avowing in private that his intent was, "to try to deflate the rosy but unrealistic ideas of the social welfare enthusiasts," Lewis knew that he, "caused quite a lot

⁴⁶William W. Gregg to Ivey Lewis, April 7, 1924, "1924 Letters" Folder, Box 1, Dean's Papers.

⁴⁷Lewis's reputation as a eugenicist outstripped his classroom in other ways. Lewis's assisted Dr. Walter A. Plecker, Virginia's Registrar of Vital statistics from 1912 to 1946, in enforcing the Racial Integrity Act. Walter A. Plecker to Ivey Foreman Lewis, October 29, 1926; and Ivey Foreman Lewis to Walter A. Plecker, November 9, 1926, "1926 Letters" folder, Box 1, IFLC. Lewis also aided Cox and Senator Theodore G. Bilbo in promoting their 1939 "Negro Repatriation Bill" in Congress. Ivey Lewis to Earnest Sevier Cox, May 20, 1939, Earnest Sevier Cox Papers. On a similar note see, Earnest Sevier Cox to Ivey Lewis, July 2, 1949, "C" Folder, Box 14, Dean's Papers. In this letter, Cox asks for Lewis's endorsement of Senate Bill 1880, "which proposes to pay the expense of Negroes desirous of migrating to Liberia." Cox states, "In my opinion, there is no one in Virginia who would favor the ideals embodied in the bill more so than you, and no one whose character and influence would be more likely to favorably impress the committee."

⁴⁸Lewis, "Biological Principles," 4. The speech argued that national policy in welfare, education, marriage, and even the provision of food all undercut biological law and threatened American civilization.

of disturbance among the council" of the AAAS.⁴⁹ Letters of support flooded in to Lewis, many of which were racist and anti-Semitic. James A. Tignor wrote, "in this day of indecision, emotional instability and general unreliability, the German and his kindred races alone seem still to be dependable, honest, reliable, and willing to work." Agreeing with Lewis that the "modern trends of government and officialdom" undercut natural law and presaged degeneration, Tignor noted ominously, "The Gestapo was only the revolt of the [fit] people and I can well visualize it, if things keep on this way, as preferable. Enough is enough! Keep up the fight."⁵⁰ Lewis thanked one supporter and remarked, "there are some very powerful organizations that regard my views as heretical." By 1951, Lewis's eugenics was no longer credible among the majority of scientists represented by the AAAS, despite the fact that many members of that body—and the public who monitored its activities—still agreed with Lewis.⁵¹

* * * *

The Revolt Against Civilization: Eugenic Anti-Semitism and Anti-Radicalism

The recurring references to Hitler and the Nazi eugenic program indicate that a particular formulation of anti-Semitism was operating on the campus of the University of Virginia, and elsewhere in the state. While anti-Semitism, whether overt in the form of physical violence toward Jews, or covert in the form of restrictive housing covenants and "restricted" clubs closed to Jews, ran rampant in the United States for at least the first half of this century, elite colleges and universities became particular foci concentrating

⁴⁹Ivey Lewis to Harcourt Parrish, esq., July 1, 1952, "R" File, Box 27, Dean's Papers (letter apparently misfiled). See also, Ivey Lewis to Harcourt Parrish, May 5, 1952, "1952 Letters" Folder, *ibid.*

⁵⁰James A. Tignor to Ivey Lewis, January 5, 1952, "T" Folder, Box 29, Dean's Papers. See also, A. W. Wetsel to Ivey Lewis, January 4, 1952, "W" Folder, *Ibid.*

⁵¹Ivey Lewis to Clyde G. Harris, December 29, 1951, "H" Folder, Box 26, Dean's Papers. Alden A. Porter protested the decision not to publish Lewis's paper in, Porter to Dr. Howard A. Meyerhoff, Chairman, AAAS Editorial Board, April 8, 1952, "R" Folder, Box 27, Dean's Papers, (letter apparently misfiled).

prejudice. The University of Virginia, despite its ecumenical background, did not lack an anti-Semitic impulse of its own. Administrators at the University of Virginia regularly characterized Jewish students as a necessary evil; most of them came from wealthy New York families and thus represented full tuition payments and potential alumni donations.⁵² This pecuniary interest mixed with a cultural prejudice that was reinforced by eugenic concerns. The administrative careers of George Oscar Ferguson, Ivey Foreman Lewis, and Harvey Ernest Jordan exemplify the operation of eugenic anti-Semitism at the university, especially apparent in the 1930s.⁵³

In his 1924 speech, "What Biology Says to the Man of Today," delivered to University of Virginia students under the auspices of the Anglo Saxon Clubs of America (ASCOA), Ivey Lewis used Jews to illustrate eugenic racial purity. He argued, "The only foundation for an enduring culture is a sound stock of fairly homogeneous races." The Jewish experience provided the example to prove this rule. "It is no accident," Lewis contended, "that the culture with the longest continuous history in the world has been carried on by the race which is most jealous of its purity." Mixing ethnology and religion, Lewis continued, "Furthermore, the greatness of the Jewish tradition has been carried on only by that section of the race which preserved the Divine commands. The ten tribes mixed with surrounding people and have absolutely disappeared."⁵⁴ At first glance, Lewis appeared to valorize

⁵²University of Virginia Historian emeritus Raymond A. Bice made this point repeatedly during an interview. Raymond A. Bice and Franklin Bacon, Interview by Gregory M. Dorr, 25 January 2000, tapes in author's possession.

⁵³Ironically, when the American Eugenics Society held a contest for the best religious sermon on eugenics, the only entry from Virginia came from the Temple Emanu-El in Roanoke. Rabbi George Benedict delivered a sermon entitled "Eugenics" on June 4, 1926. That sermon asked the rhetorical question, "And what but the eugenic development of the race of Israel, whom, according to the conception of Moses, God had chosen to be a pattern to mankind as a nation consecrated to holiness, is the prime intent beneath every one of the laws of Moses?" Benedict's sermon received a "B" rating, eight grades beneath the top rating of "AA." See "Benedict, George" folder; and Rabbi George Benedict, "Eugenics (1926)," TMs, "1926 Sermon Contest #1" folder, American Eugenics Society Papers, American Philosophical Society Library, Philadelphia.

⁵⁴Lewis quoted in "Biologist Supports Curb on Immigrants," *New York Times*, April 6, 1924, E5.

Jewish racial pride. Understanding his remarks in context helps to frame his true beliefs, and sets the background for his and other administrators' policies toward Jews.

Anti-Semitism wound throughout the eugenics creed. Although Jews could be congratulated for their sense of racial purity, they were demonized for their "clannishness," which made them unassimilable and a threat to America's social solidarity. Eugenacists could admire Jewish racial integrity and excoriate their social insularity; indeed, many eugenacists explained the latter "trait" as a function of the former. Some eugenacists, like Lewis, created a taxonomy of "good" and "bad" Jews that neatly mirrored their views about blacks. "Good" Jews, like good blacks, most nearly conformed to middle-class white norms in social deportment, yet remained within their social "place," not seeking to marry into gentile/white families or invade gentile institutions. "Bad" Jews, like "uppity" blacks, "pushed" against all these boundaries and sought too much equality with gentiles, especially through sexual intercourse.⁵⁵ Unfortunately, in the minds of most eugenacists, the "bad" Jewish trait was the dominant hereditary type. Sir Francis Galton set the pattern for this commentary when he wrote that "the Jews are specialised for a *parasitical* existence upon other nations, and that there is need of evidence that they are capable of fulfilling the varied duties of a civilised nation by themselves."⁵⁶

Many Jews, however, excelled in the arts and sciences and displayed high intelligence. Just as Jefferson neutralized the threat Benjamin Banneker posed to his convictions regarding black inferiority, later eugenacists used the evidence of Jewish intelligence to argue for Jewish inferiority. Charles Davenport led the way, inverting the usual logic and claiming that Jewish intelligence varied inversely with morality. Evaluating the quality of

⁵⁵Thus E. A. Ross, as vehement an anti-Semite as a eugenicist, could write that, "The fact that pleasure-loving Jewish businessmen spare Jewesses but pursue Gentile girls excites bitter comment." Ross quoted in Haller, *Eugenics*, 147. In 1930, Leon F. Whitney and William Grossman wrote that, just as some Anglo-Saxons came to America after being expelled by Britain as "dross," so too, "there are good and bad Jews but that in general the Jew is a valuable contribution to the national stock." These two men, one a gentile, the other a Jew, then explained Jewish "excellence" as the result of Talmudic injunctions. Leon F. Whitney and William Grossman, "Some Reasons for Jewish Excellence," *Eugenics* 3 (1930): 52-57.

⁵⁶Galton quoted in Chase, *Legacy of Malthus*, 14. Emphasis Galton's.

Jewish immigrants, Davenport argued that, "the hordes of Jews" from southeastern Europe and Russia "with their intense individualism and ideals of gain at the cost of any interest, represent the opposite extreme from the early English and more recent Scandinavian immigration with their ideals of community life in the open country, advancement by the sweat of their brow, and the uprearing of their families in the fear of God and love of country."⁵⁷ Although Lewis and other eugenicists acknowledged Jewish intelligence, they turned this into a negative aspect by making it *cunning* and a symptom of acquisitiveness, and not a marker of cognitive superiority. Thus E. A. Ross could write, "The fewness of Hebrews in prison has been used to spread the impression that they are uncommonly law-abiding. The fact is it is harder to catch and convict criminals of cunning than criminals of violence." Jews represented a eugenic threat *because* of their intelligence, which they used to subvert civilization to their own ends.⁵⁸

Indeed, as Lothrop Stoddard warned in *Revolt Against Civilization: The Menace of the Under-Man*, a thinly veiled anti-Semitic tract, "The revolutionary unrest which to-day [1922] afflicts the entire world goes far deeper than is generally supposed. Its root-cause is not Russian Bolshevik propaganda, nor the late war, nor the French Revolution, but a process of racial impoverishment, which destroyed the great civilizations of the past and which threatens to destroy our own." According to Stoddard the "Under-Man," an hereditarily inferior being, lay behind all radical revolutions. Stoddard implied that Jews disproportionately comprised the ranks of the under-men. "In the first place," Stoddard wrote, "the Jewish mind, instinctively analytical, and sharpened by the dialectic subtleties of the Talmud, takes naturally to dissective [as opposed to constructive] criticism." Jewish intellectuals, Stoddard believed "with their quick, clever intelligence, made excellent

⁵⁷Charles B. Davenport, *Heredity in Relation to Eugenics* (New York: G. P. Putnam's Sons, Inc., 1911), .

⁵⁸Chase, *Ibid.*, 174-77, quotation 275-76. See also Chase's discussion of Carl C. Brigham's conclusion, in *A Study of American Intelligence*, that IQ tests "proved" that most Jews, especially immigrant Jews, were not as intelligent as many people believed. *Ibid.*, 268.

revolutionary leaders and could look forward to attaining high posts in the 'officers' corps' of the armies of revolt."⁵⁹ Although Stoddard was referring to the European revolutions of 1848, his clear implication was that Jews remained the backbone of the revolutionary cadre guiding the "Under-Men" against civilization. It did not take much for eugenicists, who knew that the American Left was disproportionately comprised of Jewish intellectuals living in East Coast cities, to conclude that Jews were hereditarily predisposed to radicalism and subversive action. Ivey Lewis and the other University of Virginia eugenicists sought to document this problem and used this logic to rationalize their persecution of Jewish students.

Virginia eugenicists—particularly Ivey Lewis, George Oscar Ferguson, and Harvey Jordan—feared Jews almost as much as they did the feeble-minded or blacks. Their unease was reflected in the admissions policies of the University of Virginia and its medical school, in disciplinary actions against Jewish students, and in the rare instances where Jewish students asked these men for letters of recommendation. Just as these men used science, through eugenics, to legitimate their Negrophobia, so too did they rationalize their anti-Semitism as scientific inquiry into the "Jewish problem." This is particularly apparent in the case of Lewis, who read and assigned Stoddard's book to his classes.

Lewis's patron at Virginia, President Edwin Anderson Alderman, died in 1931, but that did not end Lewis's influence in the University's administration. Alderman's successor, John Loyd Newcomb, elevated Lewis to the newly created position Dean of Students in 1933. Lewis immediately began an effort to rationalize student oversight along neo-eugenic lines. In his second year, he asked Newcomb for the full-time services of Miss

⁵⁹Lothrop Stoddard, *The Revolt Against Civilization: The Menace of the Under Man* (New York: Charles Scribner's Sons, 1922), quotations from preface and 151–52. The book's cover is embossed red-on-black, with a hammer and sickle located, in telling fashion, in the center. Stoddard defined the Under-Man as not only the obviously defective and degenerate, but also "the 'border-liners'—those who *just* fail to achieve a social order, which they can comprehend but in which they somehow cannot succeed." Chronic failures in life, "the basic attitude of the Under-Man is an instinctive and natural *revolt against civilization*." Ibid., 22 and 24. [Emphasis in original.]

Mary Profitt, a secretary he shared with Dean of the College George Oscar Ferguson.

Lewis and Profitt gathered "Personnel information" about the students "in some detail," he told Newcomb, so that "information could be had about any student at any time." Lewis argued that effective administration depended on his having "information as to interests and capacities of individual students."⁶⁰ To gather this information Lewis suggested a "carefully drawn information card" that could be filled out at registration and filed for future reference. This data would allow Lewis to make studies not only of individual students, but also of groups affiliated by ethnicity, religion, association, class cohort, and other variables. In essence, Lewis created a small Eugenics Record Office (ERO) in his office. Lewis used this information to monitor and control students, particularly Jews and those of liberal political and racial beliefs.

In 1939 Lewis wrote President Newcomb, "Every so often I make a study of the percentage of Jewish students in the University so that we may be aware of the facts and the trend." For each year that he had been Dean, Lewis tabulated the number of Jewish students in the undergraduate population from both a demographic and a disciplinary standpoint. Lewis relied on the information cards and surnames to determine which students were Jewish. Evidence of Jewish attempts to "pass" came from discrepancies he found between "those who registered with the Bursar as Jewish, but who, with the Registrar, expressed a preference for a Christian denomination or who left this question blank." Lewis also labeled as Jewish those who "express no religious preference but who were believed to be Jews because of the place they live at the University or for other reasons." Both Dean Lewis and Dean Ferguson became alarmed because the "percentage

⁶⁰Ivey F. Lewis to John Loyd Newcomb, April 12, 1934, "Dean's Office 1934-36" folder, Box 9, President's Papers, RG 2/1/2.491, subseries II, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as President's Papers, three-digit suffix, subseries number.]

of Jews is steadily increasing, having now reached the figure 15.5 in the College and 10.87 in the University."⁶¹

George Oscar Ferguson, whose psychometric measurements and hereditarian beliefs regarding blacks were discussed in chapter three, was an inveterate anti-Semite. His distaste for blacks was almost equaled by his dislike for Jews. As Dean of the College, Ferguson oversaw student admissions. He viewed the admission of Jews as a necessary expedient, particularly during the depression. Jewish students represented, for Ferguson, full-tuition payments, an important economic incentive during the Depression. Indeed, in the early 1940s, when World War II prompted America's economic rebound, Ferguson was heard to remark, "Thank God the Depression's over. Now we can stop letting in all the damned Jews."⁶² After the college, the medical school enrolled the greatest number of Jewish students, a constant source of trouble for Harvey Ernest Jordan.

Jordan became Dean of Virginia's medical school in 1939, which gave him final authority over medical school admissions. Previously, however, Jordan had occupied a

⁶¹Ivey F. Lewis, "Memorandum for the President from Dean Lewis," January 31, 1939, "General Records—Dean Lewis (1939–40)" folder, Box 5, President's Papers, 491, III. The University of Virginia segregated Jewish students into Jews-only dormitory suites; students with "gentile" names who lived in this dormitory were presumed Jewish (or evicted by Lewis). See, for instance, correspondence between Ivey F. Lewis and Nancy Echols, July 29 and July 31, 1942, "1942 E" folder, Box 7, Ivey Foreman Lewis Collection RG 6/2/3299, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as IFLC.] Echols informed Lewis that two Jewish students wanted to retain their room in the summer term, even though adjoining suites would be filled with gentiles. "Neither looks nor seems to act like a Jew," Echols wrote. Lewis replied, "I do not think you would be justified in continuing to let Kantor and his friend occupy a suite in a gentile group." Similarly, many fraternities restricted membership to non-Jews. Jewish students responded by organizing a number of national Jewish fraternities. Membership in these houses at Virginia marked a student as Jewish. See also, Ivey F. Lewis to John L. Newcomb, "Jewish Students: Session 1936–1937," in "Jewish Students" folder, Box 3, Dean's Papers. Lewis continued this habit through the 1940s. For examples see Ivey Foreman Lewis, "Enrollment Statistics," November 14, 1945, "Statistics" folder, Box 4, Dean's Papers. Asked by the editor of *The Village Forum*, a Chicago publication advocating interracial cooperation, for statistics on "the number Gentiles, Jews, and Negroes that attend the University of Virginia," Lewis lied that, "Our students are not classified by racial origin." See Clarence E. Mansfield, M.D. to Governor, September 9, 1941; and Ivey F. Lewis to Mansfield, September 17, 1941, "M (1941)" folder, Box 5, Lewis Papers.

⁶²Interview with Raymond A. Bice and Franklin Bacon, Interview with Gregory M. Dorr. Bice, a popular professor of psychology, also assisted in the registration process and often came into contact with Ferguson. By that time Ferguson was regarded as incredibly intelligent, but more of an administrator than a scholar. Bice expressed disdain for Ferguson's work, "He was a tester, interested in IQ and we [the rest of the psychology faculty] didn't care about that." Ferguson still taught in the education department, which by 1940 had become marginalized and scorned by other academic disciplines.

central role in the admissions process by screening and recommending applicants. In December of 1934, President Newcomb, under political pressure from Richmond, inquired into the status of Emmanuel Dickler's application to the medical school. In a lengthy letter, Jordan outlined the problems he faced. "I foresee considerable difficulty about admitting Mr. Dickler unless his record is really brilliant or unless you should especially wish to have him admitted, assuming that his record is satisfactory, for reasons of expediency." Jordan reminded Newcomb that, "we try to limit the number of admissions from outside the State of Virginia to the number of fifteen....Moreover, I try to apportion these fifteen or twenty admissions among as many states as possible with preference to applications from the Southern States and West Virginia." Claiming that in 1933 "our committee had approximately 200 applications from New York City, almost all of them from Jewish students," Jordan stated that, "Personally, I do not feel that we should admit more than four students to our entering class in the Department of Medicine from New York City." Other factors compounded the difficulty, because "we have at least six Jewish Students from New York now taking pre-medical work at the University of Virginia who will apply with excellent records." Since four of these students had stayed on in Charlottesville working toward master's degrees "simply because I was unable to admit them last year," Jordan felt that he could not admit Dickler. "The pressure for admission of New York Jewish students to our Medical School is getting to be terrific," Jordan complained. While he would accede to political pressure, Jordan was much more interested in admitting "good applicants from Southern institutions." Regionalism and anti-Semitism converged to work against Jewish applicants.⁶³

⁶³Harvey Ernest Jordan to John Loyd Newcomb, December 13, 1934, "Medicine, Department of-General (1934-36)" folder, Box 17, Presidents Papers, .491, II. As Elazar Barkan points out, anti-Semitism in American universities actually rose after World War II, and quota systems became more stringent. For many men this response was indeed based upon eugenic biology. Barkan discusses, in depth, the case of Raymond Pearl, Johns Hopkins biologist. Pearl, who is often lionized as an early critic of racist eugenics, was himself intensely racist and relied on many of the same justifications as the eugenicists he criticized. Pearl supported Jewish admission to the Johns Hopkins Medical School. "It is

Beyond residential segregation and some forms of social ostracism, enrolled Jewish students faced other obstacles in the person of Dean Lewis. Those Jewish students who did not identify Lewis's anti-Semitism and asked him for letters of recommendation for graduate school, the armed forces, or jobs, often gambled with their futures. Lewis would write long and effusive letters of recommendation for gentile students he barely knew. For Jewish students, however, Lewis limited himself to perfunctory notes that damned with faint praise. In 1948, a young Jewish biologist who had taken a doctorate at Virginia earned these estimations from Lewis: "Goldstein is a very good man. When he first came to us I felt some doubt as to how a Jew would fit in, but I need to have had no anxiety on that score, as he was from the first and continuously agreeable and cooperative, getting on well with both students and members of the staff."⁶⁴ In another letter of recommendation, Lewis reiterated his concerns but noted, "[Goldstein] has a Jewy look but never shows some of the unfavorable characteristics commonly attributed to his race."⁶⁵ Among the many stereotypical "unfavorable characteristics" Lewis attributed to Jews was dishonesty. In another letter of recommendation, Lewis attempted to torpedo a Jewish student's candidacy for medical school. "H. J. Hatchfield registered at the University of Virginia as H. J. Hochfelder," Lewis began. He then went on in a perfunctory tone, "His record has been outstandingly good in his classes," noting that his appearance on the Dean's List in every semester but the first "shows unusual ability." Lewis closed saying, "I do not know

my reasoned conviction that there should be such discrimination," he wrote, basing his conclusion "on that ground that it is a necessary move in the struggle for existence on the part of the rest of us." He felt that Jews had "a much higher survival value than the non-Jew in societies organized as ours," and that this Jewish survival value "arises as I analyse it primarily from the nearly complete absence in him of any inhibiting sense of morals or decency...." Yet Pearl opened this letter professing that he was "completely free from racial prejudices," revealing just how his scientific beliefs rendered his prejudices transparent. Barkan, *Retreat of Scientific Racism*, 210–20, quotation 217.

⁶⁴Ivey F. Lewis to Paul A. Moody, University of Vermont, August 1, 1948, "M" folder, Box 12, Dean's Papers.

⁶⁵Ivey F. Lewis to Dr. J. Henry Walker, University of Alabama, March 12, 1949, "W" folder, Box 13, Dean's Papers. See also Lewis's letters to University of Pennsylvania, Temple, Yale, Rochester, and Vanderbilt's medical schools for Mr. Dann, November 13, 1941, "1941 D" folder, Box 5, IFLC. Lewis wrote, "Personally I regard Mr. Dann very highly. In both appearance and attitude you would never guess that he is Jewish, although he does not conceal this fact."

him personally. His reputation is good."⁶⁶ Hatchfield/Hochfelder's action in changing his name undercut, in Lewis's mind, this final statement. Letters such as these stemmed from Lewis's larger attempt to prove statistically the existence of a Jewish proclivity to subterfuge and malfeasance.

Dean Lewis tracked the number of Jewish students expelled from the University of Virginia for "honor" violations, as well as those involved in "licentious" behavior.⁶⁷ It becomes apparent that Lewis was attempting to prove that Jews were inherently dishonest, and therefore likely to cheat on examinations, and immoral—again, sure signs of the hereditary nature of Jewish racial "acquisitiveness." He compared Jews to the entire student body, as well as to every other religious denomination.⁶⁸ Although the numbers remained quite small, and Jews showed no marked or statistically significant deviation from the gentile norm, Lewis persisted in compiling these figures for years. Dean Lewis also kept close track of purported moral transgressions. In a 1941 letter to Rabbi Albert M. Lewis, Dean Lewis reported that, "A couple of weeks ago two girls from Lynchburg, who ought never to be here, either came or were brought and spent some time before we could catch them in the Randall Hall neighborhood." Whether or not these young women were merely from Lynchburg, or were inmates from the Lynchburg Colony, Lewis clearly implied that they were immoral, perhaps prostitutes. In attempting to identify who brought

⁶⁶Ivey Foreman Lewis to Boston University School of Medicine, November 25, 1941, "1941 H" folder, Box 5, IFLC. Lewis often alerted officials to Jewish students attempting to pass as gentile. "Answering your request for my judgment about Maury Leigh Spencer (formerly Maury Lee Spensky)," Lewis began one letter, "He associates mostly with a very good set of Jewish boys and I would say that his general reputation is good." Ivey Foreman Lewis to the Commandant of the Fifth Naval District, November 12, 1941, IFLC. Clearly Lewis was dubious about Spencer/Spensky's character, given his desire to change his name and "misrepresent" his "race." By contrast, see his letter regarding David J. Gibson: "He is not only a man of intelligence and efficiency but I can testify that his character is beyond reproach and his loyalty and patriotism are unquestioned. His father is Rector emeritus of Christ Episcopal Church in Charlottesville, and on both sides of his family Mr. Gibson is of old American stock." Ivey F. Lewis to Officer in Charge, Naval Reserve Headquarters, Tenth Naval District, December 1, 1942, "1942 F" folder [letter apparently misfiled], Box 7, IFLC.

⁶⁷The University of Virginia continues to employ an "Honor Code" that employs a "single sanction" for lying, cheating, or stealing—expulsion. Students adjudicate cases of alleged violations.

⁶⁸See charts in "Jewish Students" folder, Box 3, Deans Papers.

these women to campus, Lewis's informants were "unanimous to the effect that it was the action of the Jewish boys in Randall Hall." Lewis asked the Rabbi to look into the matter and turn over the boys to him. "I need not point out to you," Lewis patronized, "how unfortunate it is to have such an incident attributed definitely to a certain group [Jews]. It brings them into public notice in a most unfortunate way."⁶⁹ From hereditary dishonisty and immorality it was only a short step, for Lewis, to hereditary radicalism.

Lewis merged his surveillance of Jews with his patriotic anti-radicalism in precisely the fashion advocated by Lothrop Stoddard. Throughout his career as an administrator, Lewis worked to undermine any attempts at political radicalism or interracial cooperation at the University of Virginia. In doing so, he tended to target Jewish students for repression, viewing them as instigators and ringleaders of political and interracial unrest. As the mid-1930s interest in Socialism and Communism swept across college campuses in the wake of the Spanish Civil War, Lewis grew increasingly uneasy about political and social rallies held on campus. He worked to obstruct peace demonstrations, labor organizing, and efforts to promote interracial harmony. Acutely aware of the Popular Front's efforts to use race as an issue for mobilizing radical sentiment, Lewis did everything he could to suppress the discussion of these issues on campus.⁷⁰

Lewis was a scrupulous steward of university facilities, but in determining whether or not to allow groups access to buildings and meeting spaces, he favored those ideologically

⁶⁹Ivey Foreman Lewis to Rabbi Albert M. Lewis, May 24, 1941, "1941 L" folder, Box 6, IFLC.

⁷⁰In opposing a 1936 peace demonstration, Lewis denied students the use of Virginia's centrally-located amphitheater "on the grounds that it might disturb classes to have such an assembly on the University grounds." Outflanked, Lewis advocated "the policy of simply no cooperation....we should pay no attention to it one way or the other." The disingenuity of his stance is revealed in the next sentence, "The incident, however, raises for subsequent consideration the question of whether the University should continue to permit the existence of an organization which as such takes action tending to cripple the teaching function of the University by encouraging and even demanding absence from class." Lewis cloaked his reactionary tendencies behind a spurious desire to maintain academic integrity. Ivey Foreman Lewis to John Loyd Newcomb, April 21, 1936, "Dean's Office (1934-36)" folder, Box 9, President's Papers, . 491, II. For the relationship between Communist mobilization, the Spanish Civil War, and issues of race in America, see Robin D. G. Kelley's important essays, "'Afric's Sons With Banner Red': African American Communists and the Politics of Culture, 1919-1934," and "'This Ain't Ethiopia But It'll Do': African Americans and the Spanish Civil War," in Kelley, *Race Rebels: Culture, Politics, and the Black Working Class* (New York: The Free Press, 1994), 103-58.

aligned with himself. In 1934, he refused to allow "an address by a Negro Communist" to be delivered in a university building. As he remarked in a letter to the editor of the local newspaper, "The question is fundamentally one of propriety. Is it a proper use of the facilities of the University of Virginia to provide a platform for discussion of highly controversial subjects under conditions which would be offensive to the people for whom the University was founded and maintained? It seems to me that the answer to this question is a categorical No." The "highly controversial subjects" included labor organization, a timely issue in the midst of New Deal reform. The "offensive" conditions were, of course, an interracial meeting—even if the black speaker was the only African American present. Lewis weakly denied race was a factor, writing, "It is unfortunate that in the application of this general principle to a particular case the race of the speaker is a factor, since the University has never taken a narrow or prejudiced view toward colored people, but on the contrary has many times shown by word and deed the friendliest spirit toward them."⁷¹ From this first foray, Lewis launched a steady campaign of obstruction and repression of dissident thought.

Lewis often used university regulations as a mask and warrant for his own political ends. A mimeographed copy of the University of Virginia's Young Communist League's pamphlet fell into Lewis's hands in 1936. Hiding behind the "impartial" administration of University regulations, Lewis sought to identify members of the group. Dean Lewis wrote to the post-office box listed in the pamphlet, "Please let me know the names of the responsible editorial board, or the officers and directors of the Young Communist League. As you know, anonymous publications are forbidden by the University authorities. The rule applies to all regardless of the nature of the publication." Meanwhile, Lewis sent the pamphlet to Professor Garrard Glenn of the university's law school for his legal opinion.

⁷¹Ivey Foreman Lewis to Editor, *The Daily Progress*, May 18, 1934, "Dean's Office (1934-36)" folder, Box 9, President's Papers, 491, II. Perhaps because of Lewis's blatant internal contradiction, President Newcomb decided not to submit this letter for publication.

Glenn wrote, "In my opinion it does not constitute indictable matter. That is, it does not violate the criminal law. It is full of 'weasel words', and it would be difficult to say on the whole, that it advocates the overthrow of the present government, Federal or State, by violence." For good measure, Glenn added a remark that surely buttressed Lewis's eugenical beliefs, "It is needless to add that in my opinion this publication will never convince a person of average intelligence."⁷² Lewis, however, never dropped his guard, and his hyper-vigilance often unmasked his own beliefs.

Approached in 1938 by Catholic, Methodist, and Jewish clergymen with a request to use the University of Virginia's main auditorium, Cabell Hall, for "a day of intercession for oppressed people of Europe," Lewis reacted in a manner that belied his own motivations and underscores the political and "racial" polarization among the undergraduates at Virginia. Acting in President Newcomb's stead—the president was out of town—Lewis denied the request to use Cabell Hall on three grounds. First, he felt that, "The movement was in no sense a University matter" and should be held in the community armory. Second, Lewis invoked his educational scruples, arguing that the request was "obviously a plan to use the prestige and name of the University of Virginia for purposes other than education." Finally, he felt that the organizers were prompted by "the concentration at the University of a large number of young men whose attendance would help make the meeting a numerical success." While these three reasons seemed necessary and sufficient to Lewis, he developed his argument further in his memo to President Newcomb. Lewis continued,

I was careful not to mention important matters in the back of my mind. First, there is a growing resentment against the Jews at the University of Virginia. Mr. Faulkner [professor of English (?)] at the meeting of the Committee on Academic Legislation that afternoon spoke of the remarkable agreement among his students with the Hitler policies. I am a little afraid that pro-Jew propaganda backed by Jewish national organization would do more harm than good at the University of Virginia. It seems to

⁷²See "Communist Literature" folder, Box 2, Ivey Foreman Lewis Papers 5119, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as Lewis Papers.] Ironically, the pamphlet featured a silhouette of Jefferson and the Liberty Bell, and the title, "The Young Communist League Continues the Revolutionary Traditions of Thomas Jefferson." This surely infuriated Lewis.

me quite likely that the pro-Jew meeting of protest would bring forth a reaction that would not be to the interests of the University of Virginia. Regardless of how we feel personally there are two sides to every question, and a great many people believe that the growing number of Jews in the United States is a menace to the American way of life. Assuming from Mr. Faulkner's statements that there are some students who feel this way it would be natural for them to resent and oppose a move of which the only political consequences would be the admission of still larger numbers of Jews into the United States.⁷³

These comments reveal as much about Lewis, and ambient American attitudes toward Jews and Hitler, as they do about the tenor of student politics at Virginia.

Lewis himself knew, from his class's term papers, that some students favored Hitler's policies. Lewis's eugenic teaching probably helped to cultivate that attitude. Fourteen years earlier Lewis had advocated immigration restriction—particularly of southeastern Europeans, a popular cipher for Jews—before a large gathering at the University of Virginia. His eugenics course continued to teach precisely these values. Lewis's concern revolved not around how the feared anti-Semitic backlash might affect Jews on campus, but rather that such turmoil would sully the University's reputation. Moreover, he implicitly defended the anti-Semitic position by acknowledging that "there are two sides to every question." Lewis obviously ranked himself among the "great many people [who] believe that the growing number of Jews in the United States is a menace to the American way of life."

Ivey Lewis's repeated interactions with one young man, David Carliner, illustrate the lengths to which he would go in stamping out radicalism. In 1939, Lewis strained to obstruct a "Youth Conference" that seemed too radical. It was during this incident that he first made the acquaintance of David Carliner, a young law student he branded as an "extreme leftist."⁷⁴ The Virginia Youth Conference sought to gather students, white and black, male and female, and young workers together to discuss the problems facing

⁷³Ivey Foreman Lewis to John Loyd Newcomb, November 17, 1938, "University Problems and Policies" folder, Box 4, Lewis Papers [5119].

⁷⁴Ivey Foreman Lewis, "Memorandum to President Newcomb," January 25, 1939, "Dean Lewis" folder, Box 5, President's Papers, .491, subseries IV.

Virginia in the Depression. The interracial and leftist nature of the conference immediately alarmed Lewis. The dean objected to "the participation of organized labor groups, which are in no sense of the word youth organizations." Secondly, Dean Lewis argued, "The only basis for the University's participation in such a Conference is educational. At the present time both the law of Virginia and long established custom decree that the white and negro races be afforded separate educational facilities." Lewis then twisted the United States Supreme Court's decision in *Missouri ex. rel. Gaines v. Canada*, acknowledging that the decision had "raised serious problems of administrative method in furnishing equal educational facilities to the two races." Nevertheless, he felt that,

The government of Virginia must at the proper time give consideration to the question how under our fundamental law substantially equal educational opportunity may be provided for both the whites and negroes.

The University is in a fundamental sense an arm of the government of Virginia. It is its will, no less than its duty, to uphold the established law of the Commonwealth. The right to throw open its class-rooms to use by students from negro institutions during the regular session is one on the legality of which I am not competent to pass. As to its propriety I am more than doubtful.... Complete freedom of speech is given to students and to student organizations. In the case of the Youth Conference, however, this principle is not involved. The question is limited to the use of University class-rooms for other than university purposes by other than University organizations.⁷⁵

Lewis shielded his political objections behind administrative bureaucracy. In so doing, he also protected the eugenic integrity of the university community.

⁷⁵Ivey Foreman Lewis, "Proposed Youth Conference," n.d., "Youth Conference" folder, Box 4, Lewis Papers. In contrast, Dean Lewis advised President Newcomb to allow a group to use the most famous building on the university grounds, Thomas Jefferson's Rotunda, for a dance in support of the Aid-for-Britain Program. Lewis wrote, "we have a national objective announced by the President, an objective in which the apparently overwhelming sentiment of the University and State concurs. Therefore it seems to me that in the sponsoring body, in the nature of the proposed dance, and in the objective, we find all the conditions that are required to safeguard the use of the Rotunda." Ivey Foreman Lewis to John Loyd Newcomb, January 10, 1941, "1941 N" folder, Box 6, IFLC. Ironically, around this time, Lewis wrote "Mussolini at Virginia," an essay in which he mused, "Suppose the University of Virginia were free of all budgetary considerations, what would a Mussolini do with it in order to make it serve greatly its commonwealth and its nation?" Lewis envisioned a place where "formal entrance requirements based on units would be scrapped and any white boy would be admitted on probation as a candidate. The first month would be devoted to a series of physical and mental tests." Out of this rigor, the best would emerge. "In general, the skids would be greased for the student who is 'uneducable' or who is not really interested in education as training for life." Lewis envisioned a neo-Darwinian institution where, "It would be easy to come here, but hard to stay. Every opportunity would be offered to the ambitious student, while the lazy or incompetent boy would be quietly and finally dropped rather than receive the present warnings and periods of probation." Ivey Foreman Lewis, "Mussolini at Virginia, n.d.," TMs, "Miscellaneous" folder, Box 3, IFLC.

Lewis and Carliner managed to hammer out a three point agreement providing that, "The laws of Virginia relative to the seating of whites and negroes in places of public assembly be scrupulously observed," no resolutions would be offered for adoption, and that "organizations primarily of an adult membership be not solicited or invited to participate by sending delegates or observers." Carliner pushed for "junior sections" from precisely the organizations banned, to which Lewis responded, "A genuine youth conference can be of great value, but a 'youth conference' turned into a political-racial-labor meeting is something we would not care to seem to sponsor."⁷⁶ Lewis's obstructionist stance effectively impeded the Youth Conference, which was held, but with minimal turnout. [need to check this in college topics. that's how Lewis interpreted it later.] By 1941, however, Lewis had managed to purge the University of Virginia of its "extreme leftist" firebrand, David Carliner.

The "Carliner Case," as Lewis's persecution of Carliner came to be known, attracted national attention and negative publicity to the University. The case succeeded, however, in stifling liberal and radical political action on campus. Carliner remained in Charlottesville during the summer of 1940, before his final year of law school. On July 18, police arrested Carliner and another student for distributing "peace pamphlets" in Charlottesville's African-American neighborhood. The police officers, alarmed equally by the "leftist" nature of the pamphlets and the presence of whites in the black neighborhood, cited the young men for distributing handbills without a permit. Frightened, Carliner gave the police officer a phony name and address. Afraid that he would incur greater penalties if

⁷⁶Ivey Foreman Lewis to John G. Rust, April 7, 1939, appending "Statement of Agreement Between President Newcomb, Dean Lewis, Mr. Carliner, and Mr. Moore," Ibid. Carliner responded, somewhat sarcastically, "I am sorry that we seem to have misinterpreted your reasons for excluding political, labor, and racial organizations from the Virginia Youth Conference. It was my impression that you considered them adult rather than youth organizations and felt, therefore, that their participation would destroy the youthful nature of the conference." Copy of letter, David Carliner to Ivey Foreman Lewis, April 3, 1939, Ibid.

he confessed this lie, Carliner failed to present himself in municipal court until he was re-arrested some six weeks later. The police informed Dean Lewis of these transgressions.⁷⁷

Lewis immediately began a campaign to railroad Carliner out of the university. Carliner was not enrolled at the time, and the infraction occurred off-campus, so his case seemed beyond the university's jurisdiction. Lewis dug around for anything to incriminate Carliner. He learned that Carliner had been borrowing books from the university library, and in one case he had signed the name of a friend on the charge slip. Carliner's friend admitted charging books for Carliner, itself an infraction of University regulations. The friend confessed that he had never given Carliner explicit permission to charge books in his name. He told Lewis that Carliner probably assumed doing so would be acceptable, since he had been charging books for him anyway, and asked that the situation be viewed as a misunderstanding. Lewis, recognizing his chance to oust Carliner, gave no quarter.

Lewis bent the university's regulations to suit his ends. Since Carliner's infractions occurred when he was not officially registered, the matter fell within the jurisdiction of the Administrative Council not the student-run Honor Committee.⁷⁸ Lewis used a rule against public drunkenness to convince the administrators that Carliner should be permanently denied readmission to the University of Virginia for "conduct reflecting serious discredit upon the University." He then alerted the student Senate about the case. Comprised of intensely conservative students, the Senate declared Carliner "an undesirable student" and recommended his permanent dismissal because of "numerous long-standing debts," his scrapes with University authorities, and his "un-American activities in behalf of the Communist Party." The administrative Council had already voted to take this action when the student Senate's resolution carried.

⁷⁷An extensive file about the "Carliner Case" resides in the "Administrative Council" folder, Box 1, President's Papers, .491, subseries IV. The following account is drawn from documents in that folder and from an interview with David Carliner. David Carliner, Interview by Gregory Michael Dorr, 3 November 1995, tapes in author's possession.

⁷⁸The Administrative Council was comprised of the president and the deans of the various university divisions. Thus, Carliner faced Newcomb, Lewis, and Harvey Jordan, all virulent anti-radicals.

In the end it was Lewis's actions, not Carliner's, that reflected "serious discredit on the University." For days before the administrative council met, letters and telegrams poured in supporting Carliner. Carliner's defenders clearly understood that the young man had been singled out for his political beliefs. They implored university officials to live up to Jefferson's spirit and not deny the young man his right to free expression or his final year of legal study. Nevertheless, President Newcomb—as eager as Lewis to be rid of the young radical—hid behind the fiction that it was Carliner's lack of "personal honesty" not his "political or economic beliefs" that eventuated his dismissal. The liberal magazine *The New Republic* published an editorial condemning the actions of the University of Virginia as counter to the aims of its founder. By that time, however, Lewis had won the battle.⁷⁹ David Carliner, as Chapter 9 shows, would win the war.

Lewis's opinions, undoubtedly more extreme than many, underscore the ambient anti-Semitism in America and Virginia. The crucial point, however, is not that Ivey Lewis was a bigot. Instead, the key distinction is that Lewis himself viewed his racial prejudice as an eminently rational response to "proven" biological axioms. The laws of genetics and eugenics had, for Lewis, ossified into immutable truisms that had political ramifications. Despite advances in genetics and biology, Lewis remained wedded to decades-old ideas linking behavior and heredity.

Others like Lewis, who understood racial difference in terms of heredity, and viewed society as a large eugenic experiment, naturally continued to support the exclusion of southeastern European refugees. This eugenic impulse retarded the American response to Hitler. In Virginia, the State Board of Motion Pictures Censors denied a license to *Hitler Beast of Berlin*, a 1939 documentary depicting conditions in Nazi Germany on the grounds that it would "tend to incite to crime." The censors' statement justifying their ruling was redolent with the eugenic metaphor. "The population of Virginia, as well as of other states,

⁷⁹"Nursery of Republican Patriots," *The New Republic* (December 16, 1940), 822.

is composed of persons of nearly all races, including many of the German race," the censors began, conflating race, nation, and ethnicity. "It has been one of our great national achievements to have blended and harmonized the racial temperaments and differences of all types of people composing our citizenry and thereby to have eliminated those racial disputes and resentments which have proven so unfortunate in Europe." Apparently the culture of segregation, and the science underpinning it, aided in creating this harmony. "Nothing can be more productive of racial hatred and resentment, and particularly at this time," the censors intoned, "than an inflammatory and inhuman dramatization of events which purport to be typical of the conduct of the German Government." This movie and its "inflammatory" content, the censors thought, "create acute resentment both by and against those of our citizens who are members of the German race; by them, because they will no doubt believe the picture to be unjustified by actual facts, and against them because others will believe them true. This being true, the natural result is a clash of the races and physical violence and bloodshed, if not undue espionage and even sabotage." Editorials from *Lexington Gazette* and *Richmond Times-Dispatch* completely supported this action.⁸⁰ In the end eugenics coupled with isolationism to doom hundreds of thousands of potential refugees to the gas chambers and ovens of the Nazi final solution.⁸¹

* * * *

The Third International Congress of Eugenics: The Races of Man

⁸⁰Motion Pictures Censorship Board, "Notice of Rejection of Application" and November 22, 1939 editorials are in "Hitler Beast of Berlin" folder, "General Correspondence and Controversial Films File" Box 54, Motion Picture Censorship Board Records RG 53, Virginia State Archives and Records Center, Richmond. The film eventually passed the board, much edited, in February of 1941. It was exhibited under the more generic title *Goose Step*.

⁸¹This point is made exhaustively throughout Chase, *Legacy of Malthus*, but especially 352-53. Perhaps the most famous single incident concerning Jewish refugees and the eugenic Immigration Restriction Act centers around the 1939 voyage of the S.S. *St. Louis*. The 1974 book (and later movie) *Voyage of the Damned* immortalized the plight of the 936 passengers. In 1998 the U.S. Holocaust Museum mounted an exhibition about the ship. Scholars there have tracked almost all of the passengers and found that slightly more than half survived Hitler's death camps. See Nicholas Day, "No Turning Back: What Happened to the 900 Jews On a WWII Refugee Ship That Never Found a Safe Harbor," *Washington Post*, August 26, 1998, D1 and 8. Most Americans wanted to remain neutral in the war, fearing another World War I. Isolationist sentiment persisted even after the attack on Pearl Harbor, despite the fact that the United States had been drifting toward war for almost two years.

Ivey Lewis's activities may have been the most anti-Semitic at the University of Virginia, but they were by no means the only evidence of the thriving eugenic impulse on campus. Virginians from the University of Virginia Medical School and from Virginia's public health department remained active in eugenic research and implementation. Doctor Robert Bennett Bean released two substantial works in racial anthropology that had clear eugenic overtones. Pediatrician Lawrence Thomas Royster continued to perform research on the comparative differences between white and black children. And the tireless Registrar of Vital Statistics Dr. Walter A. Plecker continued his campaign against racial passing.

The Third International Congress of Eugenics, held in New York in 1932, has been cited by some scholars as evidence of the fall of mainline eugenics, by others as the last gasp of all eugenics.⁸² The second interpretation is largely an artifact of hindsight: since no Fourth International Congress of Eugenics was ever held, historians have portrayed the movement as expiring with the close of the third congress. The Third International Congress's low attendance and decreased financial support is more readily explained by timing—the meeting was held during the third year of the Great Depression—than by a sudden sea-change in attitudes toward eugenics.

Mainline eugenics, too, outlasted the Third International Congress. As Diane Paul has shown, Herman J. Muller's keynote address "The Dominance of Economics Over Eugenics," often misread as a categorical denunciation of eugenics, actually defended the first principle of eugenics—that "fit" and "unfit" genes exist.⁸³ Muller did, however,

⁸²Kevles, *In the Name of Eugenics*, 169–70; Chase, *Legacy of Malthus*, ; and especially Ludmerer, *Genetics and American Society*, . Kevles claims that fewer than 100 people attended the congress, but this is directly contradicted by the published numbers and at least one group photograph of 128 people taken at the meeting. Third International Congress of Eugenics, *A Decade of Progress in Eugenics: Scientific Papers of the Third International Congress of Eugenics* (Baltimore: Williams & Wilkins Company, 1934; reprint ed., New York: Garland Publishing Company, 1984), 14 and unpaginated fold-out photo before Appendix I.

⁸³Paul, *Controlling Human Heredity*, 117. Muller began by stating "That imbeciles should be sterilized is of course unquestionable." He then argued that capitalist economic inequality simultaneously masked and exaggerated genetic differences, undercutting the foundation for "objective" eugenics. According

protest the unscientific racial and class biases of the mainline orthodoxy.⁸⁴ Muller's protest, and geneticist Robert C. Cook's provocative speech, "Is Eugenics Half-Baked?," however, did fly in the face of the notion that eugenics in America was a burgeoning scientific field.

The caliber of the scientists—regardless of discipline—attending the congress was indeed quite significantly lower than it had been in 1912 and 1921. This is even reflected in the Virginia participants. While Harvey Jordan participated in the First International Congress, and Robert Bean and Lawrence Royster presented at the second, the only Virginian to attend the Third International was Dr. Walter A. Plecker. Yet the other scientists had not necessarily abandoned eugenics. In 1928 Harvey Jordan wrote a long note in favor of eugenics for the new magazine *Eugenics*; in 1932 he contributed five dollars, the second highest level of sponsorship, for the Third International Congress.⁸⁵ Timing of the congress, as much as anything, suppressed attendance.

Walter Plecker, the aged public health bureaucrat, could not by any measure be considered a scientific luminary. Nevertheless, he had increasingly come to the attention of mainline eugenicists. In 1930 he wrote "Race Mixture and the Next Census" for *Eugenics*. This article reminded readers of Virginia's efforts to preserve racial integrity.⁸⁶ It stemmed directly from Plecker's efforts to correct what he saw as weaknesses in the racial classifications used by the census. Plecker, Powell, Cox and their allies managed in 1930 to have the legal definition of blackness changed—from any individual with "one-eighth black blood" to any individual with any "ascertainable degree" of black blood. This new

to Muller, eugenics could only work in a socialist society where, with the economic variable held constant, true genetic difference might be identified.

⁸⁴Elazar Barkan's exhaustive treatment of the anti-racist sentiment among men widely believed to be critics of eugenics clearly evinces the persistence of a mainline creed. Barkan, *Retreat of Scientific Racism*, Chapter 4.

⁸⁵"In Praise of Eugenics," *Eugenics* 1 (January 1928), Orland E. White from the University of Virginia and W. E. Bullington of Randolph Macon College also contributed \$5 to the congress, a substantial show of support in 1932. See *The Eugenical News* 17 (November-December 1932), 158, 160, 162, and 163.

⁸⁶Walter A. Plecker, "Race Mixture and the Next Census," *Eugenics* 2 (March 1929), 3-7.

legal definition, coupled with the results of *Mongrel Virginians* and Plecker's stilted genealogy, essentially defined Virginia's Native Americans out of existence by declaring that none were free from some black "blood." Most became black by law.⁸⁷ Plecker himself directed census takers to classify people based on Bureau of Vital Statistics records, or the testimony of "prominent white persons in the neighborhood." When census results came in recording Native Americans in Virginia, Plecker was incensed. "Those folks that you refer to as being enumerated as Indians were by me enumerated as Negroes," one of the pollsters wrote Plecker. "In some way they must have overlooked my shoulder and they found out that they were classified as such."⁸⁸ Then they managed to have their designations changed by federal officials at the state census headquarters. By the time Plecker found out, however, it was too late to do anything but redouble his efforts, ensuring that the Bureau of Vital Statistics recorded all these Native Americans as black.

Two years later, Charles Benedict Davenport requested that Dr. Walter Plecker address the Third International Congress about his efforts in Virginia. Plecker's invitation speaks volumes about the general tone of the meeting.⁸⁹ Plecker agreed and prepared his paper, "Virginia's Effort to Preserve Racial Integrity," circulating it before John Powell and Earnest Cox for their comments. Plecker also created a number of charts that would be displayed in the Congress's exhibition hall.⁹⁰

⁸⁷Richard Sherman, "'The Last Stand': The Fight for Racial Integrity in Virginia in the 1920s," *The Journal of Southern History* 54 (February 1988), 89-91. The final bill declared that "members of Indian tribes living on reservations allotted them by the Commonwealth of Virginia having one-fourth or more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians so long as they are domiciled on said reservations." As soon as they left the reservations, these individuals became black in the eyes of Virginia law. Moreover, this provision did not cover most of Virginia's Native Americans, who did not live on reservations.

⁸⁸John C. Harris to Walter A. Plecker, July 16, 1931, Box 3, Cox Papers. Harris reports telling angry Native Americans that "certain information was to be taken from the prominent white persons of the neighborhood" implying that this was Plecker's instruction.

⁸⁹Only a year before Davenport had written to Plecker that it would be "impracticable" to pass an anti-miscegenation law in New York. The state was too racially diverse and, Davenport believed, such a law "would probably only increase the number of illicit unions, since love or lust laughs at law, as well as at blacksmiths." Charles B. Davenport to Walter A. Plecker, October 30, 1931, Davenport Papers, American Philosophical Society Library, Philadelphia.

⁹⁰Walter A. Plecker to John Powell, May 19, 1932, Box 3, Cox Papers. Apparently, Plecker had the letter addressed to Powell typed twice and sent one, with a copy of the manuscript, to Cox. Plecker's paper

Plecker began his address with the presumption that "no one in this audience will dispute the wisdom and desirability of preserving the different races of man in their purity." Commenting that "the permanent preservation of the purity of the distinct races when they remain in close contact is the most difficult of eugenic problems," Plecker then argued that while sterilization could prevent the increase of "mental defectives," only absolute separation could prevent miscegenation. To that end, "The only law worthy of consideration is one defining a white person as one with no ascertainable non-white heritage, and classifying as negro one with any ascertainable trace of the negro." Only and iron-clad "one-drop" rule could prevent passing and intermixture.

Plecker then recounted the successes and failures in Virginia's effort to police the eugenic color line. The registrar of vital statistics trotted out his familiar case studies of Virginia "Indians," whom he felt were really black, trying to pass for white. Despite the difficulties encountered in Virginia, Plecker judged this first attempt at racial registration "a satisfactory beginning." He believed that his efforts had "aroused the public to the seriousness of racial amalgamation and convinced the mass of the population that racial intermarriage, and even illegitimate sexual mating, is not only a statutory offense but a crime against both black and white races." Thus, Virginia had securely postponed the date of complete amalgamation by "some centuries," although with "the great migration of the southern mulattoes to the north," Plecker felt that "as time progresses the wave of racial amalgamation will sweep upon Virginia from the north earlier than it will from the south." The only hope, in Plecker's view, was to insure that all states enacted stringent antimiscegenation laws.⁹¹ Virginia was, therefore, the model for eugenic utopia.

Although he did not attend the Third International Eugenics Congress with Plecker, Doctor Robert Bennett Bean continued investigations in eugenics and physical

and one of these charts were published in the congress's proceedings. Third International Congress of Eugenics, *A Decade of Progress in Eugenics*, 105-12, Plate 14.

⁹¹Walter A. Plecker, "Virginia's Effort to Preserve Racial Integrity," *Ibid.*, quotations 105, 111.

anthropology that were consonant with the mainline thrust of the congress. Bean released his second book *The Races of Man: Differentiation and Dispersal of Man* in 1932. He dedicated the book to his eugenics mentor, Dr. Ales Hrdlicka, curator of the Smithsonian Institution's anthropology division. *The Races of Man* covers the evolution and differentiation of the various "types" of mankind. It is replete with invidious distinctions separating "higher" and "lower" races. Bean repeatedly compared blacks to animals. One photograph showed the "Hand of an adult Bantu Negro and the Hand of a Gorilla" side-by-side, leaving the reader to infer the similarity.⁹² Bean used another photo, of a stereotypical "Laughing Negro" to support his contention that the "finely modulated expressions of the white race" are impossible for blacks.⁹³ Accepting Hrdlicka's tri-partite division of mankind into the "three great races"—the "White Race, the Yellow-Brown Race, and the Black Race"—Bean's schematic "Tree of Races" depicted the "growth" or ascension of humankind from its common root in Neanderthal man. The first, and lowest branch on the tree, predictably, represented the "Black Race," with an internal hierarchy smaller branches for the Negrito, Negrillo, Negro, and Bushman in descending order. The next branch, up the tree is a dead branch representing the Australian aborigines, whom Bean and others figured for extinction. Next up the tree is the "Yellow-Brown Race," with an internal hierarchy of American Indian, Mongolian, and Malay. Finally, the main "trunk" of the tree represents the "White Race." Not surprisingly, Bean splits whites into two major groups. The "superior" group is composed of Nordics and Alpines, with the Alpines slightly lower. The "inferior" group of whites includes the Mediterranean, the Semitic, and the Hamitic-Dravidian sub-groups. Bean adopted, whole cloth, the taxonomy advanced by Madison Grant sixteen years earlier, completely ignoring all the advances in

⁹²Robert Bennett Bean, *The Races of Man: Differentiation and Dispersal* (New York: The University Society, Inc., 1932), 19.

⁹³Bean, *Ibid.*, 37.

cultural anthropology made by Franz Boas and his students, and even ignoring Ales Hrdlicka's public condemnation of Nordic superiority.⁹⁴

Six years later, Bean published *The Peopling of Virginia*, his final paean to "old American" stock and the so-called "American race" responsible, in his mind, for the creation of American civilization. The book was a compilation of anthropometric work that Bean had completed throughout his career "at the behest of Ales Hrdlicka," and was a companion study to Hrdlicka's *Old Americans*. Both men desired to trace the creation of a distinctly American race. Bean and Hrdlicka argued that a new human type had developed from living "in one environment for at least three generations" because, "Those who had been here so long as that probably had been here for a much longer time," and therefore represented an homogeneous group. "Old" Virginians were especially homogeneous, Bean argued, because they "came almost entirely from the Welsh Border and southern England." Identifying this new American type would "set a standard of possible value as a basis for comparison with other groups of man in other parts of the world."⁹⁵

As an ethnographic and demographic history of Virginia, Bean's study betrayed decided eugenic biases. The book's tempered language, like that in *The Races of Man*, partially masked Bean's value judgments. Nevertheless, an insistent Teutonism informs the narrative. "Germans have been coming to Virginia ever since the first boat landed with four German's on board," Bean wrote. Individuals of German heritage, according to Bean, "stuck better than other stocks, especially in good farming districts, and in the cities where their craftsmanship was in demand." This pioneering spirit paid off in racial advance for, Bean argued, "Somehow the Old Dominion formed a crucible in which men

⁹⁴Bean credits Hrdlicka with developing the tri-partite taxonomy of races. Bean acknowledged the overlapping borders of each division, yet every chart and the entire structure of his book leads the reader to conclude that he saw each group as discrete and occupying a definite ranking in a hierarchy from "primitive" to "civilized." Ibid., 97.

⁹⁵Robert Bennett Bean, *The Peopling of Virginia* (Boston: Chapman & Grimes, Inc., 1938), quotations v. Ales Hrdlicka, *Old Americans* (Baltimore: Williams & Wilkins Company, 1925). Not coincidentally, the cover for *Old Americans* bore a silhouette of Thomas Jefferson, an example of the ideal "old American" racial type.

and women were refined, until the times that tried men's souls, when a galaxy on each occasion stood forth."⁹⁶ The book's seven picture plates, which reproduced portraits of thirteen contemporary people, sought to prove this assertion. Each photograph's caption listed the racial type, stature, hair and eye color, head length and breadth, and cephalic index (head breadth divided by head length multiplied by 100). These standard anthropometric measurements had been used for decades to argue for the relative superiority and inferiority of racial types. Of the thirteen photographs, five were of "modified Nordic" old American or old Virginian stock, four showed "modified East Baltic" or "Alpine" stock, three were "Mediterranean," and one Irish. The pictures were supplied "to show some of these original stocks in their present altered condition, as it were strained out of the blending stream."⁹⁷ The final four chapters of the book reinforced Bean's sub-theme—that "Old Virginians," a group to which he happily belonged—represented one of the most superior physical stocks in the world. While Bean refrained from saying this explicitly, it is the undeniable impression that he leaves on the reader. This conclusion is consonant with Hrdlicka's findings about old Americans, although Bean's tone is more triumphal, harmonizing more than Hrdlicka with the mainline position.⁹⁸

The persistence of the mainline eugenics creed is undoubtedly due in part to the intellectual stagnation within the American eugenics movement. A great deal of truth underpins Kenneth Ludmerer's assertion that eugenics failed to attract members of the

⁹⁶Bean, *Ibid.*, 25, 42. In the second quotation, Bean borrowed the words of an unnamed "University of Michigan Professor."

⁹⁷Bean, *Ibid.*, 261.

⁹⁸Hrdlicka, for instance, noted that, "[Old] Americans in head size are superior to all the immigrants" and that this superiority resulted from "greater or lesser functional development of the brain." This would seem to indicate that the American environment caused brain/head size to swell, "a factor of great scientific as well as practical importance," according to Hrdlicka. Hrdlicka, *Old Americans*, 193. Yet Hrdlicka, unlike Bean and the Virginia eugenicists, saw no threat from continued immigration. "The newer admixtures will retard the completion of a definite American physical type, but there is no indication that they constitute any real danger," he wrote (412).

younger generation of scientists.⁹⁹ Inculcating eugenics in generations of students who would not become scientists, however, had already succeeded in spreading the creed throughout society. Men trained in eugenic thought would rise to important posts and control key health care, educational, and legal institutions throughout America and the South for more than another generation. Mirroring Thomas S. Kuhn's understanding of scientific revolutions, it would take quite some time for a new scientific orthodoxy to arise and overturn the mainline paradigm, first in the scientific community and then in America at large. This two-stage shift would result in a time lag between changes in science and society that would allow eugenics to maintain cultural force after new knowledge reduced its scientific significance.

The ossification of ideas may have prevented a wholesale paradigm shift regarding eugenics. Instead, what we understand as an abandonment of mainline eugenics may represent a different type of mutation—what historian of biology Jane Maienschein calls "transforming traditions." In this model, the traditional approach (mainline eugenics) is never wholly abandoned; it merely undergoes significant changes that render it qualitatively different from its predecessor, but only on the level of surface apprehension. So-called "reform" eugenics eschewed explicit reference to racial superiority, but it did not abandon the notion of superior and inferior genes. Geneticist Herbert Spencer Jennings, one of the most lionized of the reform eugenicists, wrote that, "a defective gene—such a thing as produces diabetes, cretinism, feeble-mindedness—is a frightful thing; it is the embodiment, the material realization of a demon of evil; a living self-perpetuating creature, invisible, impalpable, that blasts the human being in bud or leaf. Such a thing must be stopped wherever it is recognized."¹⁰⁰ This shift allowed reform eugenicists to locate "pockets" of inferior genes in new, trans-racial groups like the mentally-retarded or the diseased. Some

⁹⁹Ludmerer, *Genetics and American Society*, 9.

¹⁰⁰Herbert Spencer Jennings, "Health Progress and Race Progress: Are they Incompatible?" *Journal of Heredity* 18 (1927), 274. Jennings, it will be recalled, taught Ivey Lewis at Johns Hopkins.

scientists, as we will see in the next chapter, uncomfortable with this genetic equalitarianism, would seek to find new grounds to resurrect genetic racial difference.

The reform orthodoxy that swept American eugenics during the 1930s and 1940s washed over Virginia with little effect. The university eugenicists, for the most part, continued to teach mainline eugenics and racial medicine. More significantly, their graduated students, out in the world and perhaps out of touch with the changing canons of scientific knowledge, dismissed reports that tended toward hereditary equalitarianism. These individuals felt they simply "knew better" than those propounding the new orthodoxy. On the operative level of individuals outside the national movement's institutional structures, mainline eugenics maintained a life of its own.

* * * *

Raising Racial Consciousness: Virginia as Seat for a National Eugenics Institute

Notwithstanding strong continuities in belief, the foundation of the national eugenics movement did sustain a number of violent shocks in the 1930s that began to shatter the movement's solidarity. Charles B. Davenport went into semi-retirement in 1934, retiring fully from his post as director of the Carnegie Institution's Department of Genetics at Cold Spring Harbor in 1936. Davenport abandoned the ERO in the wake of an unfavorable audit by a committee of scientists appointed by the Carnegie Institution. Stating that the records that Davenport, Laughlin, and hundreds of eugenics field workers had painstakingly collected were "unsatisfactory for the study of human genetics," the committee sounded the death knell of the ERO. In an act of unvarnished mercy, Carnegie authorities allowed Harry Laughlin to continue on for three more years, ostensibly to finish on-going investigations in the genetics of race horses.¹⁰¹ Laughlin, however, wasted no

¹⁰¹The ERO had narrowly survived a similar audit in 1929. An excellent narrative of Laughlin's demise is in Frances Janet Hassencahl, "Harry H. Laughlin, 'Expert Eugenics Agent' for the House Committee on Immigration and Naturalization, 1921 to 1931," (Ph.D. diss., Case Western Reserve

time in marshaling his resources and attempting to create a sinecure for himself, his much beloved records, and mainline eugenics.

Seeing the handwriting on the wall, Laughlin began contingency planning in early 1936. In January of 1936 he discussed the future of eugenics with New York textile-magnate Wickliffe P. Draper. Writing later, Laughlin agreed with Draper that, "if eugenics is to be worth while it must present a practical program for the conservation of the best racial stocks in the country and must provide actively for [erasure, probably sterilization] or preventing increase of certain of the lower stocks and unassimilable races and that, in the field of applied eugenics, the principal means of action is education and legislation." Clearly attempting to salvage mainline eugenics, as well as his own administrative and scientific career, Laughlin appealed to Draper's long-standing desire to insure the racial purity of "old stock" Americans. Draper, a rabid white-supremacist and eugenics supporter, had the kind of money necessary to found a new ERO. Thirty-two years after Mrs. E. H. Harriman endowed the first institute, Laughlin was preparing to repeat history.

Laughlin had very definite ideas about where this new ERO should be located. Given the importance of education to the survival of eugenics, Laughlin sought university affiliation. A university home would provide a permanent institutional base and a ready audience of potential converts to the eugenics creed. Moreover, affiliation with a prominent university would refurbish the image of mainline eugenics, which was becoming increasingly maligned within and without the scientific community. University affiliation might protect Laughlin from the "unfair" criticism leveled at him by the Carnegie auditors. In choosing which university to approach, Laughlin balanced political considerations and his patron's predilections alongside his own concerns.

Knowing Draper's interest in "old stock" Americans and the preservation of a pure "American race," Laughlin sought an institution that had direct ties to precisely these

University, 1970), 328-36. Carnegie officials let Laughlin stay on until he expended the outside money he had acquired to support his race horse studies.

issues. "Among the different universities and educational centers in the country which have the requisites of sound history and based on the traditions most fundamental to the American people," Laughlin wrote in strained prose, "we that look upon the American people as a definite racial stock still in the majority of the whole population and worth preserving through an active eugenical policy, perhaps the University of Virginia seems most promising." Laughlin knew his audience, and pitched his appeal to Draper based on Virginia's Jeffersonian legacy. "Founded by Thomas Jefferson at Charlottesville [sic], Virginia," Laughlin claimed that the University "has a tradition of American aristocracy which the nation treasures very highly and which the Virginian himself holds without peer among American colleges." Moreover, Virginia had "an active and vigorous President in Dr. Newcombe [sic], in the Dean Dr. Lewis and the chairman of their board, Frederick Scott of Richmond."¹⁰² All of these factors, Laughlin believed, should prompt Draper to "consider, if the University of Virginia would collaborate, laying plans for an Institution of National Eugenics as a part of the University of Virginia." Laughlin felt that for "a very few thousand dollars a year," a sum well within Draper's means, one could "outline a plan of organization of such an institute to outline courses of study covering the racial aspect of applied eugenics in the public school system from the Grade 1 clear through the post graduate research work". Laughlin's assumption that he would head this national institute remained unspoken, but assumed, throughout his appeal.¹⁰³

Laughlin did not choose the University of Virginia on a whim. His long acquaintance with Virginia began during *Buck v. Bell* and the efforts to pass the Racial Integrity Act

¹⁰²Laughlin undoubtedly took Newcomb and Scott's names from "Race Equality: Raising the Jim Crow Issue," *Literary Digest* (September 7, 1935), . This article reported Virginia's actions in denying the application of an African American woman. A clipping of this article resides in the Laughlin Papers. Laughlin knew Lewis's name from his periodic surveys of college eugenics courses.

¹⁰³Harry Hamilton Laughlin to Wickliffe Draper, January ?, 1936?, Laughlin Papers [photocopy in author's possession]. The letter mentions a January 11th meeting and, from the dates of subsequent correspondence, I am inclined to conclude that this memo was written in 1936. I am indebted to Professor Paul A. Lombardo for bringing this memo to my attention. Subsequent research revealed the remainder of the correspondence.

(RIA). In the ensuing years, Laughlin maintained fairly consistent contact with Dr. Walter A. Plecker. Plecker supplemented Laughlin's information regarding the University of Virginia.¹⁰⁴ Trying to work surreptitiously, Laughlin likely did not approach Harvey Ernest Jordan because of Jordan's direct connections to Davenport. Moreover, Laughlin wanted to locate the institute in that division of the university within which he could claim some authority—that was certainly not the medical school. So, knowing Lewis's eugenic beliefs, the state's eugenic history, and the consonance between Draper's goals and the history of the University of Virginia, Laughlin approached the university administration.

Laughlin corresponded with university officials with cloak-and-dagger urgency and circumspection. He began by reminding the men of correspondence, exchanged during October of 1935, wherein they discussed "the desirability and possibility of work in eugenics by Virginia." Laughlin then disclosed the identity of "the man whose name I then withheld," Colonel W. P. Draper. Draper was scheduled to be in Washington, D.C. and, "if agreeable all around," he was willing "to drive to Charlottesville for personal conference." Laughlin assured Newcomb and Lewis that, "Draper wants nothing for himself but is in position to give substantial financial support of work which he believes would definitely revive American racial ideals and would advance them substantially."¹⁰⁵ In the midst of the Great Depression the thought of "substantial financial support" appealed to Newcomb and Lewis, regardless of their support for eugenics. The fact that Newcomb, a close personal friend of John Powell, and Lewis both supported eugenics only made the meeting more likely.

¹⁰⁴At the bottom of a handwritten draft for a telegram to President Newcomb and Dean Lewis, discussed below, Laughlin wrote "Dr. Plecker." Whether he intended Draper to meet Plecker or not is unclear. Laughlin's handwriting is virtually illegible in the best cases, and this was a hastily scrawled note. See draft telegram Harry Hamilton Laughlin to President John L. Newcombe or Dean Ivey F. Lewis, Laughlin Papers [photocopy in author's possession]; and the telegram which is located in the "D (1934–1936)" folder, Box 9, President's Papers, 491, II.

¹⁰⁵Harry H. Laughlin to President John Loyd Newcomb or Dean Ivey F. Lewis, February 18, 1936, *Ibid.*

The meeting at Virginia began in secrecy and ended in obscurity. Picking up on Laughlin's confidential tone, Newcomb replied, "I shall be very happy to hear from him [Draper] and if it is agreeable to him we shall be glad to have him come to Charlottesville for a conference about a subject which is of mutual interest. I appreciate your good offices in this matter."¹⁰⁶ Newcomb informed Draper that, "Dean Lewis and I will be happy to confer with you next week," and assured the New Yorker that he would "adjust my engagements to suit your convenience."¹⁰⁷ Draper reported his impressions of the conference to Laughlin in a note on March 1, 1936. Draper believed that Dean Lewis "especially seemed interested in my ideas and suggested that I meet Messrs Cox and Powell which I hope later to do."¹⁰⁸ This suggestion seems to have ended any serious consideration on the University's part to accept Draper's proposed bequest.

The apparent denial of Draper's offer raises more questions than available evidence can answer. Principally, one wonders why the University of Virginia, rife with eugenic belief in a state pursuing an aggressive program of applied eugenics, would reject this offer. While no documents exist detailing the final demise of this effort, Ivey Lewis's actions—taken in light of his career—suggest some possible explanations.

Ivey Lewis was, first and foremost, a shrewd politician. As his efforts to suppress radicalism indicate, he understood how to defuse potentially explosive situations. He also knew how to aggrandize influence, and he was loath to relinquish power once he held it. Bringing Draper's institute, along with Harry Laughlin, to the university would jeopardize Lewis's position a number of ways. Laughlin himself would present a challenge to Lewis's authority as a eugenicist. At the same time, Lewis may not have considered Laughlin a thorough scientist—Laughlin's Doctorate of Science from Princeton probably

¹⁰⁶John Loyd Newcomb to Dr. H. H. Laughlin, February 18, 1936, Ibid.

¹⁰⁷Wickliffe Draper to John Loyd Newcomb, February 20, 1926; John Loyd Newcomb to Wickliffe Draper, February 21, 1936; and Draper to Newcomb, February 22, 1936. Quotations from second telegram.

¹⁰⁸Wickliffe Draper to Harry Hamilton Laughlin, March 1, 1936, Laughlin Papers [photocopy in author's possession]. Again, I am indebted to Professor Paul Lombardo for drawing this document to my attention.

paled, in Lewis's estimation, to his own doctorate from Johns Hopkins. Politically, the outspoken racial extremism of Laughlin and Draper probably alarmed Lewis. Not only had he witnessed the reactions against Powell, Plecker, and Cox, but he was also dealing with what he considered his own "Jewish Problem" at the University of Virginia. As a regular reader of the *Eugenical News*, Lewis had probably detected the journal's increasingly pro-Nazi stance. In 1935, Laughlin had arranged for Draper to visit Nazi Germany and meet the German eugenicists.¹⁰⁹ Although Lewis quite possibly agreed with Nazi eugenic policies, he understood how controversial they were at home, particularly at the University of Virginia. Moreover, in the wake of the *Gaines* case, and increasing black civil rights agitation, outspoken mainliners like Laughlin and Draper risked creating a backlash similar to the one that hit the Anglo Saxon Clubs of America in 1925 and 1926.

Lewis attempted to insulate his biology program and the University of Virginia from politically hazardous situations in precisely the same way Charles Davenport labored to keep the ERO from becoming embroiled in "political" battles. In both cases, Lewis and Davenport's institutions were vulnerable to political attack; angry state legislators might curtail funding to the university just as Davenport feared that angry federal law-makers might rescind the Carnegie Institution's charter, effectively cutting off the ERO's lifeline.¹¹⁰ Lewis enjoyed his position as a prominent educator within the state and, increasingly, as an influential within scientific associations. Despite the fact that Lewis's own publication rate had plummeted, he continued to be elected to positions of authority within scientific societies.¹¹¹ He would not have wanted to jeopardize this power by

¹⁰⁹Paul A. Lombardo, "The Pioneer Fund: Missing Link in the American Eugenics Movement," TMs, in author's possession; see also Hassencahl, "Harry H. Laughlin," 336-343. Laughlin received an honorary doctorate, signed by Hitler, from the University of Heidelberg in June of 1936. The award recognized Laughlin's contributions as "the successful pioneer of practical Eugenics and the farseeing representative of racial policy in America." *Ibid.*, 350-54, quotation 354.

¹¹⁰Precisely this logic motivated John C. Merriam, president of the Carnegie Institution, to discipline Laughlin through Davenport. Hassencahl, "Harry H. Laughlin," 328-30.

¹¹¹Lewis chaired the Division of Biology and Agriculture for the National Research Council from 1933-1936; he was elected president of the American Society of Naturalists in 1939; president of the American Biological Society (1942); president of the Botanical Society of America (1949); and in 1950-

picking the wrong side in a political fight, or openly associating with a scientist other experts viewed dubiously.¹¹²

Like many scientists of his generation, Lewis felt that involving himself directly in support of political matters sullied his reputation as an "objective" investigator. Therefore, he did most of his political lobbying and mobilizing behind the scenes. His correspondence with Cox extends over 30 years and proves that he aided Cox repeatedly in his efforts to advance the cause of black repatriation. Yet he often used John Powell as his intermediary, both to shield himself from Cox's relentless pleas for help and to cover his involvement.¹¹³ He quietly taught generations of Virginia students mainline eugenics, yet he avoided being tarred with the brush of extremism within the scientific community. Lewis fits into Elazar Barkan's model of a scientist who preferred to "retain both his public prominence and his private bigotry." Even though he remained deeply convinced that science had proven that innate racial differences resulted in social inequality, he knew that in the political atmosphere of the late 1930s his views might well come under attack in a way they did not in 1924.¹¹⁴

1951 he served as President of the Botany section of the American Association for the Advancement of Science.

¹¹²Laughlin published two frankly racist books on immigration in the 1930s. *Immigration Control* (1934) and *Conquest by Immigration* (1939) were published under the aegis of the New York Chamber of Commerce in an effort to aid Laughlin's rear-guard attempts to defend the 1924 Immigration Restriction Act. Major scientists, individuals with whom Lewis associated in professional societies, condemned both books.

¹¹³The extant correspondence between Cox and Lewis is scattered among the various Lewis collections at the University of Virginia and Cox's Papers at Duke University. While the number of letters is relatively small, averaging one or two per year, the letters make it clear that the men met more frequently, and that Lewis had John Powell control Cox's access to him. See, for instance, Ivey Foreman Lewis to Earnest Sevier Cox, February 23, 1937, Box 4, Cox Papers. Lewis writes, "I will be glad to see you at almost any time except March 8-21. Make your arrangements with John Powell and let me know when to expect you."

¹¹⁴Barkan, *Retreat of Scientific Racism*, 218-20, quotation 218. Lewis made no public statement about eugenics similar to his 1924 address until 1951, when he was retiring from the AAAS and had nothing to lose. This substantiates the inference that political expedience governed the visibility of Lewis's scientific/racial principles. Kenneth Ludmerer's discussion of scientists and social responsibility bears on this point. Not only did many scientists prefer to speak as individuals rather than as groups in outwardly supporting political manifestations of eugenics and genetics, many scientists attempted not to speak publicly at all for fear of tarnishing their reputation as disinterested investigators. Ludmerer, *Genetics and American Society*, 131-33.

Whatever their reasoning, Lewis and Newcomb's reservations remained hidden from Draper and Laughlin. Convinced that Draper's report presaged good news, Laughlin responded enthusiastically, "It looks because of its historic background and traditional racial attitude, the South will develop leadership in Americanization during the next generation." Regarding Lewis's suggestion that Draper meet Cox and Powell, Laughlin noted that he knew about Colonel Earnest Sevier Cox because he was scheduled to present a paper on repatriation before the Eugenics Research Association (ERA). Laughlin, who had known Plecker since 1923, commented that Plecker, "has especially commended Cox's studies in this field." Laughlin hoped to arrange a meeting between Cox and Draper during the ERA meeting.¹¹⁵

* * * *

Cox, Plecker, and the Eugenics Research Association

Following his contributions to the 1932 Third International Congress of Eugenics, Dr. Walter Plecker experienced an upsurge in professional popularity among mainline eugenicists. On one level, Plecker's inclusion might be viewed as a function of the eugenics movement's inability to attract prominent scientists to their cause. Close examination of rolls recording who attended annual meetings of the Eugenics Research Association (ERA) and the Third International Congress, however, only partially supports this claim. While many of the brightest lights of the genetics community no longer attended, the meetings still drew significant "second tier" scientists, particularly physicians interested in applied eugenics.¹¹⁶ A number of factors begin to explain this shift. Most

¹¹⁵Harry H. Laughlin to Colonel Draper, March 18, 1936, Laughlin Papers [photocopy in author's possession]. Virginia's rejection of the Laughlin-Draper offer did not end Laughlin's hopes for a National Institute of Eugenics. Draper regrouped and founded the Pioneer Fund to continue to promote research into eugenics and the defense of the "American Race." Pioneer has since funded controversial racial (some would say racist) scholarship by Arthur Jensen, J. Philippe Rushton, and Richard Herrnstein and Charles Murray. See Lombardo, "Pioneer Fund," 82-85.

¹¹⁶Perhaps the best example of one of these luminaries is Dr. William Allan. Allan went on to found America's first department of medical genetics at the Bowman-Gray Medical School (Wake Forest) in Winston-Salem, North Carolina. He, too, spent time working with the Virginia eugenicists and he presided

academic geneticists (those not interested in medical genetics, the vast bulk of genetics researchers) shifted focus in the 1930s. Human beings, with long gestational cycles and no way to control matings, presented numerous research difficulties. The stunning advances made in the 1920s and 1930s by Thomas Hunt Morgan and others with simpler organisms like fruit flies and plants, offered neophyte investigators quick and sure paths to professional acclaim. Human genetics, so fraught with difficulty, became something of a "Holy Grail," worked on by many geneticists as a hobby or sideline. Also, by the 1930s the mainline racial position came under steady attack by top scientists. Although, as Elazar Barkan has shown, many of these investigators continued to harbor deep seated racial prejudice in private, they became unwilling to proclaim their views in public. Moreover, the general liberal shift in American political and social culture engendered by President Franklin Roosevelt's New Deal caused many people to rethink their stance on social issues. By no means effecting a sea-change, the concatenation created by these forces began to shift the scientific and social center of gravity. Mainline eugenics was not dead; it *was* ailing, however, on the national level.¹¹⁷

Doctor Plecker achieved prominence because the overtly racist wing of the mainline eugenics movement drifted toward its most extreme position in the 1930s. The advent of Nazism convinced many of these men, particularly the leadership of the ERA, that racial purity was an achievable end. Dr. Plecker, as the leader of the most aggressive eugenic antimiscegenation program in the country, naturally drew this group's attention. Harry Hamilton Laughlin proclaimed that, "Doubtless the best headquarters in the world for [studying racial integrity] would be Dr. Plecker's office in Richmond, VA. His methods of

over the North Carolina Eugenics Society and the Human Betterment Foundation of North Carolina. For other examples see the yearly listing of presenters and synopses of papers in the *Eugenical News*.

¹¹⁷The Kuhnian "paradigm shift" was on the horizon. The passing of the first generation of mainline eugenicists, effective with their death and retirement, would complete the shift. Even then, the movement was not complete, mainline beliefs regarding sterilization and feeble-mindedness (and in isolated pockets, race) persisted. In some ways, what occurred matches Jane Maienschein's notion of a "transforming tradition." See Jane Maienschein, *Transforming Traditions in American Biology: 1880-1915* (Baltimore and London: Johns Hopkins University Press, 1991), 3-9.

diagnosis of 'pass-for-whites' should be studied thoroughly at first hand and finally some border-line cases should be attempted diplomatically in the field."¹¹⁸ In 1935 he addressed the ERA, reporting on "Virginia's Methods of Research in Racial Integrity." By this time, Plecker's own stance toward black "pass-for-white" Virginians, particularly those he thought to be using Native American status to do so, had reached its extreme. Plecker claimed that, "Starting with groups of mixed breeds from two hundred to twelve hundred in number, claiming their colored admixture to be Indian with no negro, we found it not difficult to secure definite evidence of negro as the basic stock."¹¹⁹ Not only were there no "pure" Native Americans in Virginia now, Plecker's assertion was tantamount to claiming there never *were* any Native Americans in Virginia that did not have black "blood." His description of Virginia's efforts to police the color line, and doubtless his promotion of the ethnographic studies of Cox fell on receptive ears.

Harry Hamilton Laughlin had actually been aware of Earnest Sevier Cox at least since the publication of *White America*, which Laughlin reviewed favorably in the *Eugenical News*.¹²⁰ Laughlin's close ally in the effort for the federal Immigration Restriction Act, the Immigration Restriction League's Francis Kinnicutt, also knew Cox, and helped him to send every member of Congress a copy of *White America*.¹²¹ Laughlin also would have known of Powell, Plecker, and Cox through Arthur Estabrook's field reports, particularly as Estabrook and Ivan McDougale finished *Mongrel Virginians*. Quite possibly he heard of Cox's work through Madison Grant and Lothrop Stoddard. In any event, Cox's papers preserve letters between the himself and Laughlin beginning in 1934, when Laughlin

¹¹⁸Harry Hamilton Laughlin, "Outline of Proposed Researches on Race Integrity, Standards and Traits in Southern and Eastern United States," TMs, Laughlin Papers [photocopy in author's possession]. Laughlin devised this research program in collaboration with Stanton D. Wicks of Syracuse New York, who intended to travel to Virginia to carry out the study. Harry Hamilton Laughlin to Madison Grant, September 26, 1935, Ibid.

¹¹⁹Walter A. Plecker, "Virginia's Method of Research in Racial Integrity," *Eugenical News* 19 (May-June 1935), 25.

¹²⁰Cox republished a selection of this review as a testimonial on the dust jacket and flyleaf of subsequent editions.

¹²¹Lombardo, "Pioneer Fund," 45-49.

sought to enlist Cox's support for proposed immigration studies to be conducted by prominent anti-immigration activist John B. Trevor, Jr.¹²² That same year, Cox's efforts to repatriate blacks brought congratulations from the honorary president of the ERA, Clarence G. Campbell. Campbell, a Nazi sympathizer and rabid eugenicist, agreed with Cox that "repatriation is the only true solution of the Negro problem." He wrote that, "I have sent Doctor Plecker a short article that might possibly go a little way toward helping the cause along. And I wish that I might come to Richmond and see you and him and Major Powell, and conspire with you on what further might be done." Campbell later remarked, echoing Cox's own sentiments, that "when Negro cooperation should be desired" in the repatriationist effort, "a considerable proportion of the better class Negroes in Harlem could be found who would be glad to support it."¹²³ Beginning in 1936, Cox gained formal entry to the elite circle of the mainline eugenics community, the Eugenics Research Association (ERA).

Acting in his capacity as secretary and treasurer of the ERA, in 1936 Harry Laughlin invited Cox to address the group on repatriation. Perhaps alluding to Draper's visit and Campbell's correspondence, Laughlin commented that, "A number of our friends have visited the South recently and have told the committee of your work, and our close collaboration with the studies of Dr. Plecker increases the committee's interest in your researches."¹²⁴ Cox accepted the invitation, and the \$50 stipend that accompanied it, and prepared to address the meeting. Campbell contacted him and offered to arrange for "an intelligent negro or two to attend the meeting and speak in support" of Cox's paper.

¹²²Harry H. Laughlin to Earnest Sevier Cox, May 28, 1934, Box 4, Earnest Sevier Cox Papers, Special Collections Library, Duke University, Durham. [Hereinafter referred to as Cox Papers]. Laughlin's correspondence appeared on ERO letterhead until 1936, when it began appearing on ERA letterhead—an indication of his increasingly tenuous position. Trevor is one of the most well-known figures in the anti-immigration movement. See Chase, *Legacy of Malthus*, 290–91; 352–53; John Higham, *Strangers in the Land: Patterns of American Nativism, 1860–1925* (New Brunswick, NJ: Rutgers University Press, 1955; 3d ed. 1994), 319–21.

¹²³Clarence G. Campbell to Earnest Sevier Cox, March 6, 1936; and Campbell to Cox, March 20, 1936, Box 4, Cox Papers.

¹²⁴Harry H. Laughlin to Earnest Sevier Cox, March 18, 1936, *Ibid.*

Campbell again affirmed that "many of the better class of negroes see eye to eye with us on this matter." He further noted that "a year or two ago some of them [upper-class/intelligent blacks] wanted to start a Negro Eugenics Society which I myself think is quite a good idea."¹²⁵ Such sentiments surely bolstered Cox's confidence as he prepared to address the group.

Cox's trip to New York would help to organize a growing network of white supremacists throughout the eastern United States. In the end, Dr. Plecker was able to attend the meeting of the ERA, and he accompanied Cox on his journey North. Plecker, of course, had been acting as a clearinghouse for information regarding Virginia's Racial Integrity Act, regularly referring out-of-state inquisitors to Cox's book and Cox himself. While in Manhattan, Cox introduced Plecker to Madison Grant. Plecker was awed to meet, the man he considered, "the leader [of] the great racial integrity movement of this country."¹²⁶ At the same time, Laughlin made arrangements for both men to meet Wickliffe Draper, to discuss their mutual interest in eugenics, racial purity, and repatriation.¹²⁷

Ivey Foreman Lewis wrote to Cox just days before Cox's trip to New York. Lewis also wanted Cox to meet Wickliffe Draper. On "Office of the Dean" letterhead, Lewis recounted his own meeting with Draper. "Mr. Draper is seriously interested in the probable solution of the negro problem," Lewis wrote. "He seems to be a man of means who will be able and willing to help effectively in carrying out any program which seems to promise some results." Noting that the University of Virginia was "unable to accept his assistance," Lewis referred Draper to Powell and Cox "in the hope that you might meet him and direct

¹²⁵Clarence G. Campbell to Earnest Sevier Cox, May 20, 1934, Ibid.

¹²⁶Walter A. Plecker to Madison Grant, June 8, 1936, Box 4, Cox Papers.

¹²⁷Harry H. Laughlin to Earnest Sevier Cox, June 1, 1936, Ibid. On the bottom of the letter, Cox drafted his telegram reply, stating that he would arrive with Plecker.

his enthusiasm along practical lines." Lewis then suggested that Cox call Draper when he went to New York, and provided Cox with Draper's telephone number.¹²⁸

Lewis's attempt to bring Cox and Draper together underscores his familiarity with Cox's efforts. Just before Lewis met with Draper the preceding February, he had been assisting Cox in an effort to get the Virginia legislature to memorialize Congress in favor of a repatriation bill. Lewis had used his political connections to lobby Virginia assemblymen McCue and Battle [need to get full names; Battle's Lewis's relative]. As a result of these efforts, Cox had been able to sway powerful assemblyman Leon Bazile. Cox had drafted a tentative resolution that revolved around his conviction that the "negro problem" could only be resolved by "separation or amalgamation." Cox felt that Bazile did not want the "idea 'separation or amalgamation'" to appear in the resolution. This did not mean that Bazile rejected repatriation. On the contrary, Bazile supported antimiscegenation law wholeheartedly—he had been Assistant Attorney General during the Sorrels case, and as a judge he would uphold the act on several occasions.¹²⁹ Bazile was, however, a cagey politician sensitive to the social climate in Virginia—he knew that relying heavily on Cox's rhetoric was likely to stir resentment. Cox insisted that "a final solution [to the "Negro problem"] is limited to separation or amalgamation," and he felt that blacks supported this notion, too.¹³⁰ Cox's effort succeeded in 1936, and this bought Lewis a brief respite from Cox's barrage of requests.

Cox, Plecker, and Draper's meeting had precisely the effect for which Lewis had hoped. The New York conclave convinced Draper to finance a new printing of 1000 copies of *White America*, for distribution to members of Congress and anyone else Cox should suggest.¹³¹ Upon receipt of his copy, Ivey Lewis wrote Cox, "I was much pleased

¹²⁸Ivey Foreman Lewis to Earnest Sevier Cox, June 4, 1936, Box 4, Cox Papers. Lewis also asked Cox to send him two additional copies of *White America* and bill them to the Miller School of Biology.

¹²⁹Most famously, Bazile was the trial judge in the Loving case.

¹³⁰Earnest Sevier Cox to Ivey Foreman Lewis, February 8, 1936, Ibid.

¹³¹In accepting the offer, Cox wrote, "An edition of *White America* was distributed to members of Congress ten years ago, to aid in the effort to restrict immigration. Now that we are to take up the cause of

with the new edition of *White America* and believe it will be very useful. I have written Colonel Draper about it."¹³² This new edition of Cox's book, combined with Virginia's Cox-prompted memorial in support of repatriation, attracted one of the Senate's most prominent racists to Cox's cause: Mississippi's Theodore G. Bilbo. "Your manuscript on the history of the cause of repatriation was a knock-out," Bilbo wrote. "I used it in my speech on the lynching bill....I have almost made up my mind to specialize on the repatriation of the negro."¹³³ Cox and Bilbo, with Draper's funding, would work together to advance repatriation, particularly as a substitute for other legislation—like the Dyer anti-lynching bill—that promised genuine improvements for African Americans.¹³⁴

In addition to securing funding for the congressional issue of *White America*, Cox and Plecker encountered virulent anti-communist feeling that reawakened them to the racial threat posed by the Popular Front. Clarence G. Campbell, honorary president of the ERA, allowed Cox and Plecker to skim "Facts About Communism" by the Texas-based anti-radical group The League of Ten Million. Suddenly Cox and Plecker made the connection between Stoddard's *Revolt Against Civilization*, their own work, and the much-vaunted subversive organizing of the Popular Front. As Plecker wrote later, "The efforts of the communists seem to be directed to the attainment of [permanent black residence in the United States] and the ultimate admixture of the races." Plecker assured officials of the

Negro colonization in Congress, another distribution especially printed for Congress will aid greatly in our work." The actual agreement stipulated that Draper would distribute 800 copies to parties suggested by Cox, with the remaining 200 copies for Cox's personal distribution. See Wickliffe P. Draper to Earnest Sevier Cox, September 18, 1936 (offer to buy books); Cox to Draper, September 19, 1936 (accepting offer and quotation above); and the voluminous correspondence among Draper's agents, Cox, and the printer regarding the completion of the order and its circulation, Box 4, Cox Papers.

¹³²Ivey Foreman Lewis to Earnest Sevier Cox, February 23, 1937, Ibid.

¹³³Theodore G. Bilbo to Earnest Sevier Cox, February 8, 1934, Box 4, Cox Papers.

¹³⁴This effort garnered the support of Dr. Paul Brandon Barringer and Dean Ivey Foreman Lewis. See Walter A. Plecker to Paul Brandon Barringer, March 7, 1938, Box 4; and Ivey Foreman Lewis to Earnest Sevier Cox, Box 5, Cox Papers. Cox and Draper corresponded until 1955. Their continued interaction will be discussed in chapter 9. Bilbo died in August of 1947, but that did not stop Cox's efforts. He recruited Senator Langer of Wyoming, who carried forward the fight, introducing a repatriation bill in every congressional session between 1949 and 1955. See Ethel Hedlin, "Earnest Cox and Colonization: A White Racist's Response to Black Repatriation, 1923-1966" (Ph.D. diss., Duke University, 1974) for a detailed account of Cox's activities along this line.

League that the fight against communism and the struggle against miscegenation were part of the same larger battle. To that end he offered the services of Earnest Cox as a lecturer at an upcoming meeting of the League of Ten Million in Asheville, North Carolina.¹³⁵

In some respects, Cox's appearance before the ERA and the anti-radical rhetoric he heard began a split in his eugenical focus. Repatriation had always dominated his consciousness, and colonization would continue to be the central concern in his life. The influence of Madison Grant, Lothrop Stoddard, Clarence Campbell, Harry Laughlin, and Wickliffe Draper—particularly in the context of the ERA—rekindled Cox's interest in Nordic superiority. Always an insistent rhythm throbbing beneath his repatriationist and antimiscegenation rhetoric, Cox began to develop an abiding interest in his "Teutonic" heritage, and as a logical (to him) extension, the Nazi eugenics efforts. Cox established contacts with prominent Nazi racial theorists before World War II. After the war he would contact other former Nazi officials; with the passage of time, Cox's views became more and more extreme.¹³⁶

Madison Grant first put Cox into correspondence with a German racial theorist. This is perhaps not surprising, since Adolf Hitler reputedly regarded Grant's *Passing of the Great Race* as his "Bible." Grant requested that Cox send a copy of *White America* to Professor Hans Günther, whom he described as "one of the most distinguished anthropologists of Germany," who had just accepted a position at the University of Jena.¹³⁷ Günther was a leader in the Nordic supremacist movement who had been deeply influenced by Grant's

¹³⁵Clarence G. Campbell to Earnest Sevier Cox, June 8, 1936; Walter A. Plecker to The League of Ten Million, June 24, 1936 (quotation); Clarence G. Campbell to Earnest Sevier Cox, July 1, 1936, Box 4, Cox Papers. Cox's anti-Semitism reared its head in 1933, when he praised Madison Grant's anti-Semitic *Conquest of a Continent*, and in 1944 when he reviewed Ruth Benedict and Gene Weltfish's pamphlet *The Races of Mankind* for Senator Bilbo. See Earnest Sevier Cox to Madison Grant, October 26, 1933, Box 4; and Earnest Sevier Cox to Senator Theodore G. Bilbo, May 8, 1944, Box 6, Cox Papers.

¹³⁶Lombardo, "Pioneer," 51–53. Lombardo concentrates on the effect this association had upon the subsequent history of the Pioneer Fund. I am more interested in the effect Cox's Nazi associations had upon the eugenic underpinnings of his ideas, and how his ideas then informed Virginia white supremacists' response to black civil rights victories in the 1950s. These issues will be discussed in chapter 9.

¹³⁷Madison Grant to Earnest Sevier Cox, June 11, 1930, (quotation); and Madison Grant to Earnest Sevier Cox, June 24, 1930, (thanking Cox for sending the book), Box 3, Cox Papers.

book, and had suggested that Lothrop Stoddard release of a German edition of *Revolt Against Civilization*. By 1930 Günther was already a committed Nazi; when Hitler's party took control of the province of Thuringia that year, he saw to it that Günther was given a new chair in *Rassenkunde* (literally "race" and "knowledge," approximately "race study" or "raceology") at Jena. Showing his support, Hitler attended the professor's first lecture. Günther's *Kleine Rassenkunde des deutschen Volkes* (*Short Race-Study of the German People*) became wildly popular, selling over 272,000 copies between 1929 and 1943.¹³⁸ Thus Cox's relatively obscure work found its way into the hands of an architect of the German eugenic program.

Cox himself sought out allegiance with Reichsminister Wilhelm Frick, Nazi secretary of the interior and prominent racial theorist. Complimenting Frick on his article "The Rise—Not Downfall—of the West," Cox sent him a complimentary copy of *White America*. Cox told Frick that he agreed entirely with Frick's assertion that, "'We now know that cultural creativeness is dependent on racial character.'" He then outlined his desire for repatriation, as well as his sympathies with the German cause in World War I. He concluded by remarking, "I am among the twenty five million white people who live in the area occupied by most of our negro population. We [southern whites] are of Saxon descent mixed but little with the brunet elements of England, and are sensitive to the fact that through a common Teutonic heritage we are closely allied to western Germans." He averred that, "Personally, I hold a high admiration for your country and an affection for your people." After the war, Cox noted on the back of this letter that, "Fearing that Africa might fall to Hitler I wished to approach him with our White America ideals," because Cox hoped to "maintain a gateway for the colonization of the American Negroes."¹³⁹ Hitler, it appeared to Cox and others in 1938, held the key to sustaining civilization.

¹³⁸On Günther see, Robert Proctor, *Racial Hygiene: Medicine Under the Nazis* (Cambridge and London: Harvard University Press, 1988), 27, 53, 119, 293; and Alan Chase, *Legacy of Malthus*, 347.

¹³⁹Ernest Sevier Cox to Wilhelm Frick, November 28, 1938 (notation on back of letter), Box 5, Cox Papers.

The New Sparta: Lothrop Stoddard Comes to Virginia

Lothrop Stoddard wrote another best-selling book in 1940, *Into the Darkness: Nazi Germany Today*. A sweeping account of life under the Reich in wartime Germany, including an interview with Hitler himself, the book revolves around the eugenic metaphor. All of European civilization existed, according to Stoddard, under the shadow of war, and the heart of that civilization, Germany "is dependent upon the outcome of the life-and-death struggle wherein it is engaged."¹⁴⁰ Mostly ambivalent in tone, the book betrays Stoddard's more than grudging respect for the efficiency and apparent single-minded purpose of the fascist state.¹⁴¹

Stoddard's sympathies are particularly evident in his chapter "In a Eugenics Court." Confessing that he had "long been interested in the practical applications of biology and eugenics—the science of race betterment," he described his observations of the Nazi eugenic program. He interviewed Reichsminister Frick and Hans Günther, as well as most of the other high ranking Nazi eugenicists. Stoddard was also allowed to "sit beside the judges during a session of the Eugenic High Court of Appeals."¹⁴² Glossing over "the physical elimination of the Jews themselves from the Third Reich," Stoddard concentrated on a narrative that attempted to differentiate between "popular" notions of Nazi eugenics and the ideas of the Nazi scientists themselves.

¹⁴⁰Lothrop Stoddard, *Into the Darkness: Nazi Germany Today* (New York: Duell, Sloan & Pearce, Inc., 1940), 157.

¹⁴¹Stoddard closed the book extolling the pleasures American materialist culture. "Even more satisfying," he concluded, ironically given the theses advanced in his other works, "is the sense that you are among your own kind who are not worried and harassed and ulcerated by nationalistic hatreds. Yes, it was great to be in the American atmosphere once more." Stoddard, *Into the Darkness*, 306. In his address at the University of Virginia, Stoddard was more candid, calling his trip "a repellent and depressing experience." Lothrop Stoddard, "Nazi Germany—The New Sparta, June 1940" TMs [copy], p. 1, Box 47, Institute of Public Affairs Papers RG 2/4/1.891, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as Institute Papers.]

¹⁴²Stoddard, *Ibid.*, 187.

Stoddard crafted an apologia for the Nazi scientists. He claimed that their ideas had been misunderstood by most people outside Germany, and even by some "ignorant Nazis" within Germany. To prove this, Stoddard described the Nazi negative and positive eugenic programs. He related the "painstaking, methodical" operation of the eugenics court through four cases. "I came away convinced that the law was being administered with strict regard for its provisions and that, if anything, judgments were almost too conservative," Stoddard concluded, seemingly unaware that the entire event may well have been staged for him.¹⁴³ He ended the chapter describing the "Ten Commandments for the Choice of a Mate" promulgated by Nazi authorities. Full of the standard eugenic exhortations to remain pure, stay healthy, never mix races, and examine the ancestry of prospective mates, Stoddard gushed, "What an amazing mixture of idealism and propaganda! This martial Decalogue is a striking instance of the Nazi attitude and methods." Stoddard would bring his appreciation of this attitude and method to the University of Virginia in the summer of 1940.

Stoddard, a best selling author of provocative books, was well known to the University of Virginia community. Not only were his works assigned by the various eugenics enthusiasts on the faculty, the university's late-legendary first president, Edwin Anderson Alderman, had proclaimed himself a fan of Stoddard's work.¹⁴⁴ It comes as no surprise then, given his reputation and recent experience, that he would be invited to participate in the annual Institute of Public Affairs. The institute prided itself on the catholicity of its approach, typically inviting speakers from multiple viewpoints to discuss a given topic.¹⁴⁵

¹⁴³Elsewhere in the book he seems fully conscious of he notes the power of Nazi censors. In his address at the University, Stoddard remarked at length on Nazi propaganda. "The Nazis are thoroughgoing propagandists—the cleverest I have ever come up against," he averred. His conclusions about the eugenics court reveal the extent to which his own biases and predilections blinded him to possible subterfuge. Stoddard, "Nazi Germany—The New Sparta," 2.

¹⁴⁴See the discussion of the Stoddard-Alderman correspondence in chapter 3.

¹⁴⁵At least one individual involved in the Institute was skeptical about Stoddard's appearance. Upon receiving Stoddard's request for guidance in preparing his address, Professor Bruce C. Hopper, who was the discussion leader on Stoddard's panel, forwarded the letter on to Institute Director Dr. Hardy Dillard. Across

In 1940 this eleven-day seminar focused on the general subject "The United States and a World at War." Stoddard delivered his address "Nazi Germany—The New Sparta" as part of a panel on "The War and Germany."¹⁴⁶ His address summarized his book, "which describes and analyzes wartime Germany from the inside, with its cult of ruthless, all-round efficiency, whereof the Army is merely the brazen spearhead of all that lies behind."¹⁴⁷

Stoddard depicted Nazi Germany as the ultimate totalitarian state—a New Sparta—motivated by "sheer hard work and self-sacrifice under iron discipline for common ends." He visualized the Third Reich as "a sort of super-battering-ram, smashing its way to its ambitious goal by forceful means." Although Stoddard admired the "biological or racial basis" on which the Nazi state was organized, he felt Nazism ultimately subverted this healthy, organic system, subverting individualism and making the individual "little more than a cog in a machine that exists primarily as an instrument for collective ends." Ultimately, he believed the German state devolved to the morale of the people, which was "strong—but brittle," like a rubber band it could stretch very far but then would suddenly snapping. Stoddard, holding a Harvard doctorate in History, understood the Jeffersonian atmosphere in which he was speaking, and valorized individualism accordingly. So, as much as he could admire aspects of the Reich, he felt compelled to note that, "If we Americans will work as hard in *united*, disciplined endeavor, we can do as well or better [than the Nazis]."

Stoddard's message was one that Virginia's eugenicists had been promoting for years.

* * * *

the top, Hopper scrawled, "Hardy: Can the Institute wave a wand over Lothrop Stoddard and produce the right colored rabbit?"

¹⁴⁶Institute of Public Affairs, *Program* (June 14–24, 1940), 1 and 13–4, "Institute of Public Affairs (1939–1940)" folder, Box 8, President's Papers, .491, IV.

¹⁴⁷Lothrop Stoddard to Dr. Hardy Dillard, June 2, 1940, "Lothrop Stoddard, Esq. (1940)" folder, Box 109, Institute Papers.

"Hitting Some Hard Blows": Sterilization and Antimiscegenation, 1930-1950

Although elite scientists at the national level, and some popular commentators, began to question mainline eugenic ideology in the 1930s, these debates had little effect on the prosecution of Virginia's practical eugenics program. Analysis of the *Virginia Medical Monthly*, sterilization rates, and Dr. Walter A. Plecker's enforcement of the RIA reveals that Virginia's eugenic juggernaut churned ahead, relatively unhindered by negative publicity and changing scientific standards. The impulse for sterilization rapidly gained momentum after the *Buck* case; after all that effort to obtain the law, its use was a foregone conclusion. Almost no professional objections to sterilization existed, either. As Diane B. Paul has shown, even most geneticists still felt that sterilization was a sound response to severe physical and mental defect.¹⁴⁸ Although Adolf Meyer and Abraham Meyerson, the two leading American lights in the scientific study of mental disorders, moved away from the eugenic sterilization, overburdened administrators of state hospitals viewed sterilization as the most efficient way to treat the largest number of patients. Therapeutically neutral, sterilization was politically indicated as state hospital directors sought to prove the value and utility of their institutions by patient throughput statistics. Always a marginalized population lacking political advocates, the mentally retarded fell victim to ideological inertia and political expedience, which resulted in steady sterilization rates.

Virginia's physicians continued to encounter articles discussing eugenic sterilization in the *Virginia Medical Monthly* during the 1930s. In 1929 the journal ran "The Social Aspect of Mental Abnormalities and the Problem of Eugenics," by Philadelphia physician Alfred Gordon. Gordon hewed to the mainline positions that "Heredity is the cause of causes"

¹⁴⁸Diane B. Paul and Hamisch G. Spenceer, "Did Eugenics Rest on an Elementary Mistake?" in Diane B. Paul, *The Politics of Heredity: Essays on Eugenics, Biomedicine, and the Nature-Nurture Controversy* (Albany, NY: State University of New York Press, 1998), chapter 7.

and that sterilization offered the best means for preventing feeble-mindedness.¹⁴⁹

Following Gordon, physicians from Virginia's state hospitals unleashed a steady stream of articles about eugenic sterilization.¹⁵⁰ These pieces reveal a consistent belief in the mainline eugenic explanations of mental retardation, and unflagging support for sterilization. They also indicate the blurring of ethical boundaries in the physicians' approach to these patients. Dr. H. Coles Grant of Staunton, Virginia reminded his colleagues that "Sterilization of the insane or feeble-minded must necessarily be done with as little fright and inconvenience to the patient as possible, lest the patients to follow stampede and refuse to be operated [sic]."¹⁵¹ Doctors from the Eastern State Hospital noted that while sterilizing women, "we routinely remove the appendix" even if it was not diseased. They remarked that, "sterilization seems a rational and safe method of lowering the percentage of the mentally incompetent in future generations."¹⁵² In case physicians did not understand the operations, the *Medical Monthly* ran illustrated articles, depicting

¹⁴⁹Alfred Gordon, "The Social Aspect of Mental Abnormalities and the Problem of Eugenics," *Virginia Medical Monthly* 56 (October 1929), 469–74, quotation 472.

¹⁵⁰H. Coles Grant, "Sterilization by Vasectomy Under State Law," *Virginia Medical Monthly* (January 1930), 683–84; Charles W. Putney, "Sterilization Without Unsexing: A New Operation for Sterilizing the Female is Described," *Virginia Medical Monthly* 57 (June 1930), 180–183; E. R. Mickle and C. E. Holdberry, "Eugenic Sterilization," *Virginia Medical Monthly* 57 (September 1930), 387–89; J. S. DeJarnette, "Eugenic Sterilization in Virginia," *Virginia Medical Monthly* 58 (January 1931), 678–680; J. H. Bell, "The Biological Relationship of Eugenics of the Development of the Human Race [sic]," *Virginia Medical Monthly* 58 (February 1931), 727–33; J. H. Bell, "Status of the Feeble-minded and Epileptic in Virginia," *Virginia Medical Monthly* 59 (October 1932), 387–89; J. H. Bell, "Sterilization as a Contraceptive," *Virginia Medical Monthly* 60 (November 1933), 483–484; Charles W. Putney, "Eugenic Sterilization," *Virginia Medical Monthly* 63 (March 1936), 705–09; Roy K. Flannagan, "Man Culture," *Ibid.*, 712–715; H. C. Henry, "Eugenic Sterilization," *Virginia Medical Monthly* 63 (December 1936), 548–51; and G. B. Arnold, "Eugenic Sterilization of the Epileptic and the Mentally Deficient," *Virginia Medical Monthly* 67 (January 1940), 45–47. DeJarnette was superintendent of Western State Hospital. Grant and Putney worked under DeJarnette at the Western State Hospital. Mickle and Holdberry worked at Eastern State Hospital. Bell was superintendent of the Lynchburg Colony. Roy K. Flannagan was a member of the Virginia Public Health Department. Henry was superintendent of Central State Hospital. Arnold succeeded Bell as superintendent at Lynchburg.

¹⁵¹Grant, "Sterilization by Vasectomy," 683.

¹⁵²Mickle and Holdberry, "Eugenic Sterilization," 388, 389. The authors also noted Virginia's version of the "Mississippi appendectomy." They wrote about "one patient, sterilized incidentally to an operation for acute appendicitis, was so disturbed that it was necessary to keep her restrained most of the time for three weeks after the operation to prevent her from clawing at the incision." (388–89) One wonders whether her disturbed state was part of her mental pathology or a reaction to learning that she had been sterilized.

improved methods for sterilizing women and men in 1930 and 1936.¹⁵³ Dr. Joseph DeJarnette felt compelled to run his poem "Mendel's Law" for the third time. In 1936, Dr. Charles Putney discussed the Nazi eugenic program and remarked, "Hitler seems to agree with Dean Inge who says that 'The state has as good a right to remove undesirable citizens as a gardener has to weed his garden.'" Clarifying his own position, Putney wrote, "Feeble-mindedness, degeneracy, criminality, and diseases get so thoroughly intermingled and become such a part of the constituents of a nation that retrogression ensues. The nation itself becomes degenerated and finally crumbles and falls." Eugenic sterilization offered the only hope; Putney arrived at the mainline conclusion and echoed the Nazis.

These physicians acted on their beliefs. Statistics gathered by political scientist Julius Paul in the 1960s document Virginia's aggressive use of sterilization.¹⁵⁴ The year after Carrie and Doris Buck were sterilized, Virginia neutered 206 inmates of state hospitals. This number jumped to 395 the following year. Virginia averaged 316 sterilizations per year in the 1930s, during the height of the Great Depression. In the 1940s, Virginia's sterilization rate dropped to approximately 196 per year. During the 1950s, the yearly average dropped to 125. When viewed in isolation, this steady average decrease seems to support the thesis that eugenic sterilization waned over time, particularly as the Nazi abuses came to light. A decrease of 36% from the 1940s to the 1950s seems dramatically significant. The yearly rate of sterilization, however, decreased only slowly, with the cumulative effect apparent only in the average. Put in context, the Virginia statistics tell another story.

¹⁵³Putney, "Sterilization Without Unsexing," 180-83.

¹⁵⁴It is notoriously difficult to obtain accurate sterilization statistics. Currently, states closely guard these figures, embarrassed by their eugenic history. Before 1970, however, relatively little stigma attached to eugenic sterilization. Julius Paul, working in the late 1950s and early 1960s, actually received assistance from state bureaucrats. Virginia's statistician for the Department of Mental Hygiene and Hospitals, Edna M. Lantz, actually assisted Paul in compiling the statistics in Tables I and II. These figures are taken from Julius Paul, "...Three Generations of Imbeciles Are Enough..." 511.

The vigor of Virginia's sterilization program becomes apparent when it is compared to that of all the other states pursuing eugenic programs. Although California, Kansas, Indiana, Michigan, and North Carolina all had sterilization statutes in operation before Virginia, by 1932 Virginia had eclipsed all but California in cumulative sterilizations.¹⁵⁵ Moreover, as Philip Reilly notes, after World War II, Virginia and North Carolina vied for the most sterilizations each year. While North Carolina sometimes tallied more operations, Virginia never relinquished its second place position.¹⁵⁶ Virginia physicians' zeal for sterilization actually drew a warning from Assistant Attorney General Joseph L. Kelly, Jr. Kelley chastised the State Hospital Board for inattention to the procedures required by law. Probably in an attempt to save money, the Board was failing to maintain verbatim transcripts of all sterilization hearings. Kelly told the board that, "the continued existence of the law is dependent upon a strict adherence to these requirements. Any laxity in this respect would not only impair the legality of particular proceedings, but would endanger the continued existence of the law itself."¹⁵⁷ Virginia's doctors complied with Kelly's warning and protected their eugenic prerogative.

¹⁵⁵Paul, *Ibid.*, 503.

¹⁵⁶Reilly, *Surgical Solution*, 94.

¹⁵⁷Kelly quoted in Paul, "Three Generations," 504.

Table I: Virginia Sterilization Rates, 1924 to June 30, 1964¹⁵⁸

Year	Male	Female	Total
1924			None
1925			None
1926			None
1927			None
1928		(2)	2
1929			206
1930			395
1931			324
1932			309
Subtotal	431	805	1,236
1933	108	100	208
1934*	218	247	465
1935	134	159	293
1936	145	161	306
1937	128	136	264
1938	148	173	321
1939	143	181	324
1940	161	188	349
1941	121	168	289
1942	149	183	332
1943	94	125	219
1944	28	103	131
1945	45	92	137
1946	61	119	180
1947	31	84	115
1948	19	113	132
1949	83	131	214
1950	60	148	208
1951	95	111	206
1952	57	96	153
1953	92	77	169
1954	57	114	171
1955	50	61	111
1956	57	30	87
1957	34	79	113
1958	46	69	115
1959	22	40	62
1960	9	53	62
1961	6	33	39
1962	11	20	31
1963	10	29	39
1964	10	23	33
TOTALS:	2,836	4,241	7,104

*The original lists an unexplained adjustment in 1934.

¹⁵⁸From Paul, *Ibid.*, 511. Virginia continued sterilizing patients until 1972. Figures for the total number of sterilizations in Virginia, published in the press and court documents during the 1980 class-action lawsuit brought by sterilization survivors, range between 7,500 and 8,300.

When one looks at the sterilization totals by state institutions, a striking pattern emerges (Table II). Western State Hospital and the Lynchburg Colony led all white institutions. Lynchburg, being technically the home for feeble-minded Virginians, would logically be expected to perform the greatest number of sterilization procedures. Of the other hospitals for whites, however, Western State led the way. This was probably due to a number of factors, not least of which was the hospital's proximity to eugenics supporters at Lynchburg and the University of Virginia.¹⁵⁹ The main factor, however, accounting for Western's vigorous sterilization program was Dr. Joseph "Sterilization" DeJarnette. One of the three founders of sterilization in Virginia, DeJarnette sterilized large numbers of patients. The Central State Hospital, home to Virginia's feeble-minded and insane blacks until the Petersburg Colony opened in 1939, began sterilizing blacks in 1929.¹⁶⁰ Virginia, unlike the Deep South states, spent money to sterilize its black population, averaging 50 procedures a year according to one estimate.¹⁶¹ Judging from these numbers, it does not appear that Virginia disproportionately targeted blacks for sterilization. Blacks comprised approximately 24 percent of Virginia's total population and approximately 26 percent of all sterilizations were performed on blacks, between 1930 and 1960.¹⁶²

Table II: Virginia Sterilizations by Hospital, 1924 to 1964¹⁶³

Central State Hospital	1,634
Eastern State Hospital	393
Southwestern State Hospital	364

¹⁵⁹See note 197, below.

¹⁶⁰Erin Himstedt, "Not for Their Own Good: African American Mental Health and Eugenic Sterilization Programs in Virginia," (MA Thesis, University of Virginia, 1995), 27. Himstedt worked more recently than Julius Paul, but calculated 220 fewer black sterilizations. I accept Paul's figures because of the unprecedented access he had to Virginia's records. The split between Central State and the Petersburg Colony's figures is not explained by Paul or Himstedt. The two facilities were, for all intents and purposes, the same.

¹⁶¹Himstedt, *Ibid.*

¹⁶²I do not have the figures for the total institutionalized population during this period. It is possible that blacks, as a proportion of the total institutional population or as a proportion of the total black institutional population, were sterilized at a greater rate when compared to similar proportions for whites.

¹⁶³From Paul, *Ibid.*, 512. Paul notes that the discrepancy between the totals in Table I and Table II is accounted for by the fact that the Lynchburg Colony performed some operations between 1924 and 1927 that were not reported in the hospital's annual reports, but came to light later.

Western State Hospital
Lynchburg Training School
Petersburg Training School

630
1,701
2,781
246
Total: 7,119

A number of plausible reasons can be advanced explaining Virginia's willingness to sterilize blacks as well as whites. The first is primarily economic, although all eugenic sterilization programs were predicated on stopping dysgenesis *and* saving the state money. Although cash-poor, Virginia remained wealthy in contrast to her southern neighbors. The resources could be split in Virginia, whereas further South there was no viable option for this. Dedicating resources to both races had both a paternalistic and a sinister aspect, however. The paternalist rationale for sterilizing blacks held that such intervention would improve the quality of Virginia's African Americans in precisely the same way it would whites. Since blacks were believed to be disproportionately criminal, diseased, and hereditarily unfit, the state would realize immediate (and disproportionate) savings if it sterilized blacks. On the more sinister side, sterilizing blacks would increase the dysgenic pressure on the race—maybe the final solution of extinction could be achieved, reasoned some Virginians. Moreover, sterilized black women would be "safe" domestic employees. They could not be impregnated by their employers. Doctor Albert Priddy argued explicitly along this line, although referring to white women, while lobbying for the sterilization laws.¹⁶⁴

The racial integrity justification probably carried additional weight. Since women generally, feeble-minded women particularly, and black women to an even greater extent, were considered hypersexual, it would be best to sterilize as many of them as possible (Table III). This comported with the class biases inherent in eugenic sterilization, which focused on inmates of *state*, not private, institutions. State patients tended to be of the lowest socio-economic class, the group blamed for most miscegenation by elite whites like Powell, Plecker, and Cox. Sterilizing both sides of this line protected society from

¹⁶⁴See Chapter 5, page 397.

increasing numbers of "pass-for-white" individuals. Even though most hard-line eugenicists in Virginia saw blacks as the greatest threat, the menace of feeble-minded whites mating with blacks caused even greater alarm. Finally, the money would never be geared disproportionately to black sterilization for the simple fact that ardent racists would see this as "favoring" blacks to the neglect of whites.

Table III: Virginia Sterilizations by Race/Gender¹⁶⁵

Race	Number	Percentage
Black	1,880	26
White	5,239	74
Men	2,836	40
Women	4,241	60

Unlike blacks, women unquestionably bore the brunt of Virginia's sterilization program. Overall, Virginia sterilized women about one and one-half times as often as men, although women and men composed roughly equivalent portions of the population. More men were sterilized than women in only two years between 1933 and 1964 (Tables I and III). Virginia's practice with regard to women matched the national pattern. Erin Himstedt noted that African-American women were sterilized at an even higher rate, receiving over 70 percent of procedures. Moreover, as Phillip Reilly demonstrated, eugenicists sought to sterilize the youngest women first, thereby cutting off a longer period of reproductive potential. A 1940 annual report from Central State Hospital indicates that seventy-eight percent of the women sterilized were between the ages of fifteen and twenty-four, while another eighteen percent were under fourteen years old.¹⁶⁶

Virginia's sterilization rates belie the notion that the Great Depression brought an end to eugenics. Additionally, the sterilization figures disprove the assumption that knowledge of Nazi abuses curtailed applied eugenics in the United States. Virginia's eugenic program experienced a barely discernible dip in 1944–1945, then slowly climbed through the early

¹⁶⁵The discrepancy in total numbers between the racial and gender breakdowns reflects the different totals between Table I and Table II. This is explained in note 144, above.

¹⁶⁶Reilly, *Surgical Solution*, 95; Himstedt, "Not for Their Own Good," 28.

1950s. Sterilization rates dropped precipitously in the 1960s, as social and professional norms changed in favor of individual autonomy and bodily integrity. Virginia sterilized its last black patients in 1970 and its last white patients in 1972. Since then the 1924 law has become essentially a dead letter.

Even as Virginia's sterilization program accelerated, Walter Plecker and the antimiscegenation wing of the eugenics movement began a covert counter-offensive dedicated to circumventing Judge Holt's ruling in the Sorrells case. As Plecker wrote a resident of Arlington, Virginia in 1930, "We are hitting some hard blows here in our office quietly but are avoiding any display in public."¹⁶⁷ It would appear that Dr. Plecker had finally learned the value of discretion in prosecuting his job.

Racial and ethnic minorities continued to suffer under the persecution of Dr. Plecker and his agents in the Bureau of Vital Statistics, the Department of Public Health, and the public school system. Judge Holt's ruling in the Sorrell's case, and the subsequent imbroglio following attempts to pass the Massenburg Bill and amend the RIA, did not squelch Plecker's enthusiasm for enforcement. Instead, Plecker began to take increasingly extra- and illegal steps to coerce compliance with the RIA. In all correspondence with inquisitive Virginians, Plecker averred that no Native Americans existed in Virginia who were not of mixed, and therefore black, "blood."¹⁶⁸ Plecker opened his files to virtually any citizen who requested them, especially those considering marriage. He counseled one father that his daughter's intended groom was of mixed race, stating, "We hope that your daughter can see the seriousness of the whole matter and will dismiss this young man without more ado."¹⁶⁹ He also continued to contact school superintendents about the racial

¹⁶⁷Walter A. Plecker to A. H. Shannon, September 3, 1930, Box 3, Cox Papers.

¹⁶⁸This type of correspondence is too numerous to cite in its entirety. Examples are scattered throughout the Cox Papers. See, for instance, Walter A. Plecker to Mrs. Ira Crook Hopkins, December 1, 1941, Box 6, Cox Papers.

¹⁶⁹Walter A. Plecker to L. Quibell, March 10, 1934, John Powell Papers 7284, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as Powell Papers.]

status of "questionable" students seeking admission to their schools. On the basis of Plecker's diagnosis they would admit or, more frequently, deny entrance to students.

Plecker often gambled on the authority of his office to bully individuals into accepting his rulings. "We have again a certificate purporting to be the certificate for your birth, which you returned to us after we had declined to accept it," he began one letter. "We are returning it again and wish to state to you absolutely that you cannot file a certificate that is not in accordance with the requirements of our office." He then scolded the man, who claimed he was white and his name was Wynnel,

The name of the old negro family of which you are a member in King William County is spelled two ways—Winn and Wynn without the 'E'....under no circumstances will we permit the addition of the Tom Foolery 'El' which you have put after your name; we will have none of the foolishness of 'Moorish American' or 'Olive Moorish American' or any of this kind of stuff. If you make up a certificate and write plain negro as the race of your father and mother and it is otherwise acceptable, we will accept it.

Then Plecker threatened Wynnel's mother, who had signed the certificate. Plecker wanted "her to explain why she has changed the spelling of the old family name to 'Wynne', which is not correct." Then Plecker made an empty threat calculated to intimidate Wynnel. "I will warn you," he began ominously, "that you are coming very close to making yourself liable in law by thus changing the spelling of your name without court action." Plecker then devolved to direct insult. "We notice that you put your mother, Mary Julia Brockenbrough, also as an 'Olive Moorish American'. When did she happen to change off from a plain King William negro?"¹⁷⁰

Doctor Plecker even confessed his extralegal activities on a number of occasions. Always "glad to find young men interested in this study [of racial integrity]," he explained the difficulties he faced because of Judge Holt's various contrary decisions to a student at

¹⁷⁰Walter A. Plecker to John W. Wynn[cl], June 21, 1941, Box 6, Cox Papers. Wynnel lived in Philadelphia, so Plecker probably believed the man would not pursue the matter further. Plecker even attempted to intimidate Virginia court clerks. In 1940 he wrote, "I am amazed that you would register one of these Amherst negroes as white....Somebody [the clerk] has made himself liable to the penitentiary for registering a negro as white....I am holding the certificate as evidence." Walter A. Plecker to Clerk, Rockbridge County Circuit Court, September 11, 1940, John Powell Papers, Special Collections, Alderman Library, Charlottesville.

the Virginia Military Institute. "Owing to the decision of Judge Holt....," Plecker wrote, "we are placed under a very great burden." To alleviate the pressure, "We entirely ignore that decision which we know was made without the facts which are in our possession. We entirely ignore their [the family in question's] claims as white on their birth certificates, and place behind each of their certificates a printed sheet designated as a warning." Plecker pledged that, "Our office is determined as far as possible to secure and store all of the information available for the use of those who come after us." Plecker sent the young man copies of Powell's *The Breach in the Dike* and Cox's *White America*. The warning label read, "WARNING—To be attached to the backs of birth or death certificates of those believed to be incorrectly recorded as to color or race." It then listed Plecker's historical and genealogical authorities, concluding, "Therefore:—In consideration of the above and other similar evidence relating to all, or practically all groups claiming to be 'Indians,' the Virginia Bureau of Vital Statistics accepts the belief that there are no descendants of Virginia Indians claiming or reputed to be Indians, who are unmixed with negro blood" and classified anyone asserting such heritage as "negro or colored." Plecker had no statutory authority to take this action.¹⁷¹ His monomaniacal commitment to eugenical racial purity provided all the warrant he needed. Plecker was so supremely confident in his own eugenical/genealogical research that he was willing to tell the commissioner of the federal Office of Indian Affairs, "Your staff member is probably correct in his surmise that Hitler's genealogical study of the Jews is not more complete [than Plecker's files]."¹⁷²

Mobilization for World War II tested the limit of Plecker's abilities and ingenuity in circumventing contrary legal precedents. What alarmed Plecker most was Selective Service registration for the draft. Native Americans could register with their local Selective Service Board as "Indian" and then be trained with white troops—effectively passing into the white

¹⁷¹Walter A. Plecker to Joseph L. Savage, December 7, 1937; and "Warning Label," Box 4, Cox Papers.

¹⁷²Walter A. Plecker to John Collier, April 6, 1943, Box

community around Plecker's barriers. Plecker lobbied the State Headquarters of Selective Service, and convinced them to amend their policy. "Memorandum No. 336" from the State Headquarters of Selective Service instructed all local boards that approximately 170 men had registered as Indians. The state board then made local boards responsible for final classification. "[D]ue to the wide variation in their ethnic origin it appears impossible to classify them as a group. It has therefore, been determined that it is incumbent [sic] upon Local Boards—under the law—to make a finding in fact as to the ethnic origin of each individual Registrant, and that he be classified as White or Colored as a result of this individual study."¹⁷³ This memorandum provided Plecker with the opportunity to present evidence against each individual at his induction hearing.

While Plecker could continue to present evidence against Native Americans in front of selective service boards, in October of 1942 someone finally called his bluff. Asked by William Kinkle Allen to provide official birth certificates for a number of Native Americans from Amherst County (members of the "Win tribe," and therefore black in Plecker's mind), he informed Allen that these persons would need to re-register regarding race. "Of course," Plecker intoned, "we will accept nothing except colored on these certificates." Unlike others confronted with Plecker's scare tactics, Allen hired prominent Richmond attorney John Randolph Tucker, a member of the prestigious Tucker family that produced cleric Beverly D. and Dr. Beverly R. Tucker, both opponents of Plecker's methods. Now the tables turned, as Tucker berated Plecker for his extralegal actions. "I find no where in the law any provision which authorizes the Registrar to constitute himself judge and jury for the purpose of determining the race of a child born," Tucker wrote, continuing that unless Plecker produced the records without emendation, he would "apply to a proper court

¹⁷³Mills F. Neal, "Memorandum No. 336: Procedure for Classification of Persons Registered as Indians," January 7, 1942, Frank G. Speck Papers, American Philosophical Society Library, Philadelphia. [Hereinafter referred to as Speck Papers.]

for a mandamus to compel you to perform your duty as prescribed by the statute."¹⁷⁴

Plecker was flabbergasted. "As you point out, and as the Attorney General advises, the law does not permit us to give the truth on the certificates but seems to compel me as State Registrar to certify what I know to be absolutely false," Plecker conceded. "Perhaps you do not realize the seriousness of the matter in which you are taking part," the registrar spluttered. "The purpose of these people is not simply, if possible, to establish their claim that they are Indians but to use that means of entering and marrying into the white race," a horrible dysgenic plot in Plecker's eyes. Battered, Plecker had lost another round, but he gathered himself to continue the fight.¹⁷⁵

Barely a month later, Plecker sent out a memo to local registrars, reminding them of the threat passing posed to white society. He noted that births among the suspect groups "are usually reported by midwives of their own groups, personally interested in escaping from the negro race." To combat this problem, Plecker claimed that he had consulted with the Attorney General and prepared "a form letter to be returned to the attendant with the original certificate when the child of a colored parent is reported as Indian or white." He also encouraged local registrars to simply return suspect certificates to the midwife or physician "with the statement that you have been instructed by the Bureau of Vital Statistics to refuse to accept certificates giving 'Indian' or other incorrect statement of race. You may shift the whole responsibility to the bureau." No evidence exists of Plecker's purported conference with the Attorney General who, in view of the Allen case, would never have given such counsel. Plecker again relied on subterfuge and the power of his office to cow attending midwives and physicians into compliance.¹⁷⁶

¹⁷⁴This episode, and the correspondence from which the quotations are derived, is described in detail in J. David Smith, *Eugenic Assault on America: Scenes in Red, White and Black* (Fairfax, VA: George Washington University Press, 1992), 95-8.

¹⁷⁵Plecker finally gained legislative approval to place warnings on the backs of suspect birth certificates in 1944. Smith, *Eugenic Assault on America*, 99.

¹⁷⁶Walter A. Plecker to Local Registrars, December ?, 1942, Box 6, Cox Papers. For Plecker's effect on midwives generally and African-American midwives particularly, see Gertrude Jacinta Fraser, *African*

In 1943 Plecker sent out a reminder addressed to all local registrars of vital statistics, physicians, public health officers, nurses, school superintendents, and clerks of courts. In it he noted "the determined effort to escape from the negro race of groups of 'free issues,' or descendants of the 'free mulattoes.'" Draft registration allowed a new avenue to whiteness. "Some of these mongrels," Plecker warned, "finding that they have been able to sneak in their birth certificates unchallenged as Indians are now making a rush to register [for the draft] as white." Plecker again threatened all local registrars with "one year in the penitentiary" for making such registrations. "To aid all of you in determining just which are mixed families," Plecker added, "we have made a list of their surnames by counties and cities, as complete as possible at this time." Plecker emphasized the millennial importance of such vigilance, "One hundred an fifty thousand other mulattoes in Virginia are watching eagerly the attempt of their pseudo-Indian brethren, ready to follow in a rush when the first have made a break in the dike."¹⁷⁷ Asked by Earnest Cox to provide a graduate student to "write up" the work of Plecker's bureau, Dean Ivey Foreman Lewis promised to "see what can be done about this," but was not hopeful given the shortage of students. Still, Lewis praised the "heroic devotion" of Plecker, Powell, and Cox in passing and enforcing the RIA.¹⁷⁸

Plecker made his last stand against advocates for Virginia's Native Americans in 1945. James Coates, a shipbuilder and an amateur ethnologist from Norfolk, Virginia, had long been working with Virginia's Native American leaders to counter Plecker's repression. Coates enlisted the authority of Dr. Frank G. Speck, anthropologist at the University of

American Midwifery in the South: Dialogues of Birth, Race, and Memory (Cambridge, MA and London: Harvard University Press, 1998), Chapter 3 and 278.

¹⁷⁷Walter A. Plecker to Local Registrars, Physicians, Health Officers, Nurses, School Superintendents, and Clerks of Courts, January ?, 1943, Box 6, Cox Papers. Plecker's use of the word "mongrel" drew fire from a University of Virginia student-member of the Committee on Inter-racial Relations. Plecker promptly replied to the youth with the usual arguments. He also referred the young man to Professor Ivey Lewis for further information; simultaneously he alerted Lewis to the student's impertinence. See Walter A. Plecker to Ivey Foreman Lewis, April 24, 1943, Box 6, Cox Papers.

¹⁷⁸Ivey Foreman Lewis to Earnest Sevier Cox, January 27, 1943, Ibid.

Pennsylvania and noted authority on Native Americans. In January of 1945, Coates and Plecker engaged in public name calling through the pages of Virginia's newspapers. In the end, neither Coates, portrayed by Plecker as at best a "sentimentalist" and at worst an ignorant "race traitor," nor Speck—perceived as an outside agitator—managed to stop Plecker.¹⁷⁹ Only Plecker's retirement, at age 85, in May of 1946 could begin the slow process of eroding the effect of Virginia's eugenic RIA.¹⁸⁰ Shortly before his death, Plecker published a pamphlet entitled "Virginia's Vanished Race" in which he wondered, in rhetoric redolent with the imagery of the Old South and Nazism, "Is the integrity of the master race, with our Indians as a demonstration, also to pass by the mongrelisations [sic] route?"¹⁸¹ In 1967 the United States Supreme Court voted unanimously that the notion of a master race, at least as enshrined in statutory law, should indeed be allowed to pass into oblivion.

* * * *

Reform Eugenics in Virginia

Even as eugenic anti-Semitism increased, sterilization rates mounted, and Walter Plecker's depredations reached new heights of infamy, a barely discernible—but nonetheless significant—reform impulse mounted in the teaching of eugenics. Orland Emile White, University of Virginia geneticist from 1927 to 1955, began slowly and cautiously to turn students away from the mainline creed. Notwithstanding his own well-developed racial prejudices, White's open-minded approach to genetics combined with his liberal (for the time) views about women and birth control, allowing him to puncture the

¹⁷⁹See the Coates–Speck correspondence and clippings from various Virginia newspapers in the Speck Papers.

¹⁸⁰Plecker completed his 34-year career as Virginia's first and only registrar to that date. The process of rehabilitating Virginians of color, thought to have culminated with the Supreme Court's declaring the RIA unconstitutional in 1967, continues presently, as Virginia's Native Americans seek to gain sovereign status from the United States Congress. See Peter Hardin, "'Documentary Genocide,'" *Richmond Times-Dispatch* March 5, 2000, p. A1, A10–11.

¹⁸¹Plecker, "Virginia's Vanished Race" quoted in *Ibid.*, A10. Plecker died a month after the pamphlet appeared.

inflated rhetoric of mainline eugenics. His deep commitment to producing sound genetic researchers, and the fact that his students worked in plant rather than animal genetics, further attenuated the force of the mainline creed in his classroom. White's physical isolation at Blandy Farm, removed from the main campus, insulated him from Ivey Lewis and increased his autonomy. White, like his colleagues, continued to believe in the existence of "fit" and "unfit" genes; he merely became more skeptical about identifying them and applying that knowledge to the creation of public policy.

Edward M. East trained Orland White, and White shared his mentor's views regarding eugenics.¹⁸² White favored birth control, sterilization of the unfit, and segregation of the races, but he was not vehement in his advocacy of racial purity. White maintained relatively close ties to the American Eugenics Society and the larger eugenics movement at least through the Third International Congress of Eugenics in 1932. As noted in chapter 3, in 1929 White wrote an article for the magazine *Eugenics* and agreed to be one of its correspondents for Virginia (the other was Dr. Walter Plecker).¹⁸³ Nevertheless, sometime between 1936 and 1945, White expunged the entries recording his membership in the American Eugenics Society and the Society for Experimental Biology and Medicine from his curriculum vita. He remained, however, a lifelong member of the American Genetics Association (AGA), which espoused reform eugenics then population genetics through the 1960s.¹⁸⁴

¹⁸²See Chapter 3.

¹⁸³"News and Notes," *Eugenics* 2 (August 1929), 36; Orland E. White, "Should a Victim's [of Dementia Praecox] Relatives Marry," *Eugenics* 2 (October 1929), 23.

¹⁸⁴See "Biographical Sketches of O. E. White for Publication (1936-45)" folder, Box 1, Orland E. White Papers III RG 21/66.832, Special Collections, Alderman Library, University of Virginia, Charlottesville. The AGA's by-laws in 1925 read "The purpose of this Association shall be to encourage the study of the laws of heredity, and to promote their application in the improvement of plants, animals, and human racial stocks." This was not amended until 1964, when it was changed to read, "the application of genetic principles to plant and animal improvement and to the advancement of human welfare." "AGA 1" folder, Box A8-20F, Blandy Experimental Farm Papers RG 6/9/2.831, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as BEF Papers.] Letters in Orland White's papers show that the letterhead of the AGA ran the legend "Eugenics—HEREDITY—Breeding" under the association name at least until 1961. See letters in "American Genetics Association" folder, Box A8-18H, *Ibid.*

White taught plant genetics at the University of Virginia's Blandy Experimental Farm, and this moderated his teaching of eugenics. Working with plants, during the wave of genetic discovery following the success of Columbia's Thomas Hunt Morgan's *Drosophila* experiments, convinced White and his graduate students of the complexity of genetic interactions and the expression of genotype (genetic makeup) in an organism's phenotype (its physical characteristics). This shift in outlook, stemming from a change internal to their scientific work, tempered these students' acceptance of the mainline eugenic lessons they learned in Ivey Lewis's classroom. By the 1930s and 1940s, in fact, these budding scientists became more authoritative sources of genetic knowledge than Lewis. While these graduate students were required to take Ivey Lewis's eugenics course, what they came away from it with was probably quite different than the residuum his teaching left upon advanced undergraduates.¹⁸⁵ Many of White's doctoral students went on to solid academic careers at universities across the South, at Harvard, and in Canada. They became the core of the South's plant geneticists throughout the 1940s and 1950s.¹⁸⁶

That White taught eugenics is indicated by two surviving book lists, but the lists reveal his shifting stance. White arrived at the University of Virginia in 1927, and his first book list, from approximately that date, is replete with eugenics texts. He assigned East's *Inbreeding and Outbreeding*, Samuel J. Holmes's *The Trend of the Race*, Albert Wiggam's *The New Decalogue of Science and Fruit of the Family Tree*, Edward Conklin's *Heredity and Environment*, R. Ruggles Gates's *Heredity and Eugenics*, William E. Castle's *Genetics and Eugenics*, Vernon Kellogg's *Mind and Heredity*, and Popenoe and Johnson's text *Applied Eugenics*, along with eleven other books dealing with more specific topics

¹⁸⁵Raymond Bice remarked that by this time, Lewis was no longer respected by graduate students as a scientist, because he had largely ceased publishing. As Bice put it, no students "gathered around Lewis's feet." This cannot be said of White, whose graduate students maintained long-standing and affectionate relationships with their mentor. Various curriculum vitae of White's students, scattered throughout the White papers, reveal that they all took Lewis's eugenics course.

¹⁸⁶An unscientific survey of 25 students who took the doctorate under White, gleaned from White's papers, reveals their professional progress.

like plant genetics. These texts betray a strong tendency toward the mainline eugenics orthodoxy. By 1953, the year Ivey Lewis retired, however, only East's *Inbreeding and Outbreeding* survived on White's list. White had also added Aldous Huxley's eugenic dystopia, *A Brave New World* to the reading list.¹⁸⁷ Clearly his faith in eugenics had evolved far more than that of his colleague Ivey Lewis. This evidence would suggest that White taught a significantly different eugenic lesson than Lewis.

The best example of this difference comes from a single surviving lecture that White delivered to the Graduate Scientific Club of the University of Virginia in 1939. "Genetics is the most exact and the most dangerous of the biological group of natural sciences," White began. "It deals with the principles, generalizations, concepts, and groups of facts that underlie creating a better or worse kind of animal, plant, or human being."¹⁸⁸ This oblique reference to eugenics was as close an approach to the subject as White would make in the address, but it is telling for its cautionary and circumspect tone. Of heredity and environment, White said, "In no manner are environment and heredity to be considered as forces, and certainly not as opposing forces as is often the popular conception held by individuals in everyday life. As the geneticist views them, heredity and environment are simply phenomena, both of which are always present all the time in the life history of any animal, plant, or human being." Men like Lewis, Jordan, Bean, and Royster would certainly have agreed with this statement, but all of them would still have felt that heredity was of greater significance, a sentiment that Orland White did not share. Moreover, White cautioned, "Because human beings are such poor material to work with since the ability to control them experimentally is difficult and generations mature so slowly, we know relatively little about their heredity." Where the others would undoubtedly have forged into

¹⁸⁷See "untitled book list," n.d., and "Reserve Books Biology 109 Orland E. White 1953," in "Biology Book Lists and Correspondence (n.d., 1951, 1953)" folder, Box 9, Orland E. White Papers I RG 21/66.811, Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as White Papers I.]

¹⁸⁸Orland E. White, "Genetics in Relation to Heredity and Environment, November 7, 1939," TMs, p. 1, "1939 Aug.-Nov." folder, Box 8, Ibid.

consideration of pathological and mental traits, White confined his comments to hair texture and eye color. The whole point of his talk, which he illustrated with over 40 slides, was that "environment and heredity are very intimately mixed up" and difficult to separate—a position Lewis would have agreed with in theory, but in teaching constantly rejected.¹⁸⁹

The intimate nature of White's teaching produced particularly independent students; his attitudes toward gender and reproduction broadened their perspectives and limited the appeal of mainline eugenics. White wrote Dean James Southall Wilson, "I believe in the efficiency of small units for scientific research work. I think that there is likely to develop less dry rot and dead timber in such units. They need not be elaborate in equipment nor enormously expensive in personnel. What such units need principally is proper atmosphere, a certain type of leadership, fundamental necessities for living, compactness so that so much time and energy are not lost in useless motion, and isolation enough to prevent idle and trivial or non-pertinent questions."¹⁹⁰ The Blandy Experimental Farm, over an hour's drive from the University, housed in refurbished slave quarters where everyone contributed to daily chores, created just such an environment. White also admitted many more women to his graduate program, and produced more female doctors, than Ivey Lewis.¹⁹¹ White—perhaps because of the example of his well-educated and self-sufficient mother, and definitely as a result of his interactions with Margaret Sanger's birth control movement—held proto-feminist views regarding the intellectual capacity and "social purpose" of women. He wrote one of his female students regarding "whether it paid the State to educate women" that, "Ordinarily I think it is just pure justice, since it is all determined by the flipping of a chromosome this way or that." Regarding marriage he wrote, "While my own married life has been interesting enough, and I believe it has been

¹⁸⁹White, *Ibid.*, 1–2, 7, 16.

¹⁹⁰Orland Emile White to Dean James Southall Wilson, January 20, 1938, "Annual Report to Dean (1928–1942)" folder, Box A8-21G, BEF Papers.

¹⁹¹ Of twenty-five students who took doctorates under White, six were women. I found no evidence of any woman taking a doctorate under Lewis, although a number of women took the master's degree under his direction.

interesting, too, for Mrs. White, a lot of married life looks pretty drab and monotonous, even when it is a union between two intellectuals; and I cogitate sometimes as to whether the only recompense for it, as far as the woman is concerned, is to have somebody to tell her troubles to in old age."¹⁹² White's attitude diverged sharply from that of the mainline eugenicists, who argued that it was every individual's duty to the race to enter into a eugenic marriage and produce fit children.

White, like many other eugenicist, however, wondered about the effect higher education for women and changing marriage customs would have on the "future of the race." Higher education delayed marriage and curtailed childbearing by those women presumed most intelligent. Rising divorce rates seemed a harbinger of further reducing the number of "fit" children born to each mother. White recounted a conversation he had with one of his former female graduate students who was "the head of a big Biology Department in a women's college." White had "always considered her to be one of [his] very intelligent friends." The woman was "unmarried and wondering about what is going to become of the race, because so many of her intelligent class are unmarried and probably will remain so. She tells me that she advises her girls, for the most part, to get married and have at least five children....She insists that people like you, because of your training and because of your children, exert a great deal more influence, in all probability, in that way then [sic] if you had continued to devote yourself entirely to a scientific career." White went on, "Since I have a number of girls in my set-up now, it worries me just as to what ought to be done....One wonders, sometimes, however, when he has a bright young woman as a graduate student, whether to encourage her to marry the science or pray for a husband. How about it?"

White's female correspondent, another former graduate student who had married and dropped out of the profession to raise two children, replied, "I am still a firm believer in

¹⁹²Orland E. White to Mary Ellen Churchill, December 21, 1944, "Correspondence Ca-Com (1910-1955)" folder, Box 3, White Papers I.

education for girls—to the outer-most limit of their capacities. It may not pay the state but it certainly pays the girl, whether she sticks to a career or marries and has five babies." In a comment as reflective of social custom as eugenic sensibility, the woman wrote, "The ideal arrangement, of course, is to have both, but it takes a clever woman to manage that."¹⁹³

White agreed entirely.

As a result of the farm's intimate size, however, White taught far fewer students than Ivey Lewis (although many of them married, causing one wag to write, "Really, Dr. White, I think you ought to consider the practical Eugenics possibilities of the Farm. You have a pretty good record up to the present.").¹⁹⁴ In the short run, his students did little to counterbalance the beliefs of those taught by Lewis. In the long run, however, because White's students became professors of genetics across the South, and because they believed in a moderate, reform eugenics, they eventually managed to speed the shift in popular and professional belief away from mainline eugenics.

* * * *

Conclusion:

Without finding eugenics "under every bush and tree" in Virginia, careful analysis still leads one to conclude that the science of racial improvement continued to exert power

¹⁹³Mary Ellen Churchill to Orland White, January 2, 1945, Ibid. Ms. Churchill had married a fellow student of White's and been forced to leave academic genetics by an unplanned pregnancy. "It isn't as if we hadn't tried all the known brands of precaution which are each and every one such a pain in the neck that we have only our own carelessness to blame. I hope the pills Mr. Wiggam predicts will be on sale before I am a grandmother because otherwise I may secure my immortality with a tribe as numerous as any ignorant Italians." Churchill to White, February 4, 1930, Ibid. Ms. Churchill's invocation of eugenicist Albert E. Wiggam, her frank discussion of birth control, and her ethnic slur all reveal both the intimate nature of her relationship to her mentor, and the eugenic sensibilities that helped guide her life. Fourteen years later, in reporting to White that her children were "doing well in school and are full of bounce," she joked, "When a friend asked me if my training in heredity was responsible for my superior children, I assured him it was certainly partly responsible." Churchill to White, January 4, 1944, Ibid.

¹⁹⁴Dr. Laurence M. Dickerson to Orland E. White, December 16, 1934, "Correspondence D (1914–1952)" folder, Box 3, White Papers I. White's courses typically enrolled just 30 students total, many double counted because they took all his courses in a given year (the exceptions being from 1947 to 1950, when veterans swelled the university population). In 1942 and 1943, however, White taught a course in General and Medical Genetics that proved wildly popular, drawing 44 and 53 students, respectively. See the figures listed in his reports to the dean, "Annual Report to Dean (1928-1942)" folder and "Annual Report to Dean 1943-1955" folder, Ibid.

throughout the 1930s and 1940s. Directed by an elite cadre of Virginians, eugenic public policy affected the lives of thousands. Moreover, the willingness of many "mid-level" functionaries—from local registrars of vital statistics, to public school officials, to midwives and "country doctors"—to acquiesce in the eugenic programs speaks to the power of the eugenic ideology in daily life. Some of these individuals were doubtless coerced by the autocratic, extralegal behavior of Walter Plecker. The complicity of many, many more Virginians, however stemmed from their silent assent. To these individuals there was no "moderates' dilemma."¹⁹⁵ Instead, they viewed commitment and sterilization of the feeble-minded and the racial re-categorization of Native Americans as eminently moderate and rational approaches to social problems. Eugenics offered a "sane" alternative to the extralegal violence used elsewhere in America to control radicals, blacks, and the poor. These individuals looked to eugenics to clarify the "muddled middle" of segregated society—the boundary of the color line "where mixed-race people moved through mixed race spaces, from railroad cars to movies to department stores, neither public nor private, neither black nor white."¹⁹⁶ In so doing, eugenics alleviated these individuals' status anxiety, supporting their belief in their superiority and normalcy.

By controlling mixed-race and feeble-minded individuals, defining them definitely as not white and placing them permanently in the inferior position of racial taxonomy and

¹⁹⁵I borrow the term "moderates' dilemma" from Matthew D. Lassiter and Andrew B. Lewis, eds., *The Moderates' Dilemma: Massive Resistance to School Desegregation in Virginia* (Charlottesville, Va. and London: University of Virginia Press, 1998). This compilation of school desegregation community studies, argues that white racial "moderates" faced a dilemma when they confronted integration. In the eyes of these authors, the "silent majority" of southern whites favored integration, but were flummoxed by the radicalism of white racial extremists. In the logic of these scholars, well-meaning and "liberal" whites did the best they could in a difficult situation. I am not convinced by the arguments presented. Racism in America was and is much more deeply embedded and entrenched in social custom and individual belief. White Americans—even self-styled moderates and anti-racists—often failed to see their own racism and thus became fully complicit in the more extreme forms surrounding them. How else does one explain the common memory among whites, North and South, that "nigger" was a bad word for which one was punished, but no one advocated interracial socialization, let alone intermarriage, or even the advocacy of equal civil rights? Whites—virulently or moderately racist—have been deeply invested in the maintenance of segregated societies. Rather than apologizing for the moderates' complicity, we should confront it, and all its ugly implications.

¹⁹⁶I borrow the term "muddled middle" from Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890–1940* (New York: Pantheon Books, 1998), 9.

hierarchy, eugenics defused the dangers of interracial mixing in mixed race space.

Eugenical ideology, embodied in public policy like the sterilization act and the RIA, sought to sanctify the only space that really had to remain pure—the conjugal bedroom. Eugenical ideology sought to construct archetypal norms for all humanity—amplifying the terms of the racial and sexual contracts—by defining superior and inferior not just through race and sex classifications, but also "fitness" and "unfitness." Eugenics thus allowed for an extremely fine parsing of humanity into sub-groups, and it used the rubric of science to reify those groups, establish norms, and attempt to dictate social behavior.

Ultimately, the eugenicists would fail to achieve their goal. Changes in social context and how people defined race, class, gender, and normalcy coupled with changes internal to science to undercut the eugenic platform. Nevertheless, a strong residue of eugenic ideology would remain latent within the minds of many Americans, especially white Americans. In the long run it would recrudesce in the white response to black civil rights militancy. In the short run, it would continue to effect the lives of thousands of poor, minority, and mentally afflicted Americans.

In the final estimate, perhaps the most infamous legacy of the University of Virginia's eugenic teaching was the effect it had on health care provision. Many of the students who took courses in eugenics went on to become physicians. Of the 27 student term papers surviving from Lewis's class, nine belonged to students who went on to become doctors; one belonged to a dentist, one belonged to a woman who became a nurse, and one belonged to a man who became a plant geneticist.¹⁹⁷ Most of the students who took Orland White's classes in medical genetics went on to become doctors, although one wonders how much White's reform eugenics counterbalanced Lewis's mainline message for them. Those students who undertook their medical training at the University of

¹⁹⁷Alumni directories and other correspondence indicated student professions. That Lewis produced an even larger proportion of physicians is highly likely, as his annual reports constantly note the overcrowding of biology courses with pre-medical students. See "Miller Professor of Biology Reports," in "Miller Professor 1915-1925" Folder, Box A8-18D, BEF Papers.

Virginia also received "booster shots" of eugenics in the substantive and incidental coverage the topic received from Bean, Jordan, Royster, and others. Undoubtedly many of these physicians integrated the lessons they learned into both their personal and professional world views.

Beyond the physicians who sterilized institutional patients under eugenic sterilization laws, America has a long history of the forced sterilization of unwed mothers and welfare recipients, particularly in the South. Even Fanny Lou Hamer, the champion of black representation at the 1964 Democratic convention, claimed to have suffered a "Mississippi appendectomy," as African American women termed these forced sterilizations.¹⁹⁸ Many of the accounts regarding such activities have links to eugenics.¹⁹⁹ While it is impossible to know how many Virginia-trained physicians committed these abuses, it is certain that Virginia alumni performed many of Virginia's compulsory sterilizations between 1927 and 1972.²⁰⁰ Eugenic training also affected other areas of health care provision, particularly public health. As the next chapter shows, three famous Virginia graduates, backed by many lesser-lights trained by the University of Virginia eugenicists, committed one of the

¹⁹⁸Coerced sterilizations, and those performed without patient consent, became known as "Mississippi appendectomies" because physicians frequently misrepresented the operation as appendectomy, and not sterilization, to avoid patient objections. Chase, *Legacy of Malthus*, 18. Hamer recalled her own sterilization and alleged that of other poor, black women in, "Mississippi 'Black Home': A Sweet and Bitter Bluesong," *New York Times Magazine*, October 11, 1970.

¹⁹⁹That such abuses occurred first became well-known in 1973 "when it was learned that two Alabama children, Mary Alice and Minnie Relf [who also happened to be black] as well as two South Carolina women -- all receiving federal assistance -- were coerced into consenting to sterilizations." The resulting law suit, *Relf v. Weinberger*, 372 F. Supp. 1196 (1974), forced the federal Department of Health Education and Welfare to devise policies "to protect persons legally capable of consenting from being intimidated or coerced into sterilizations." The Health Research Group, a subsidiary of Ralph Nader's watch-dog group Public Citizen, spearheaded the assault on this form of abuse, which continues today. See, Health Research Group, "Health Research Group Study on Surgical Sterilization: Present Abuses and Proposed Regulations (October 29, 1973)"; and Health Research Group, "Sterilization Without Consent: Teaching Hospital Violations of HEW Regulations (January 21, 1975)," quotations, 4; and Chase, *Legacy of Malthus*, 16-17; and, Reilly, *Surgical Solution*, 150-152.

²⁰⁰Surgical residents from the University of Virginia performed many of these operations. In 1948, the university hospital and Western State Hospital created a "slush fund" with the fees the state hospital paid to residents for sterilizations. At the end of the year, this fund was split evenly among all the surgical staff. Thus, physicians had a pecuniary, as well as a eugenic interest in these operations. Edwin P. Lehman, MD to Dr. Henry B. Mulholland, February 25, 1948; and Executive Committee Minutes, March 11, 1948, Hospital Executive Directors Office Papers, Wilhelm Moll Rare Book and Manuscript Room, Claude Moore Health Sciences Library, University of Virginia, Charlottesville.

most infamous abuses in public health history. These three men initiated and implemented the infamous United States Public Health Service Study of Untreated Syphilis in the Negro Male.

Chapter VIII: From Human Thoroughbreds to Human Tragedy

The earliest thorough commentary on the infamous USPHS Study of Untreated Syphilis in the Negro Male concentrated on the "pathology of racism" that allowed the study to begin and continue for more than forty years.¹ Historian James Jones, the most prominent commentator on the study, has criticized this approach as an avoidance of the complex combination of factors that gave rise to and sustained the study. Jones preferred to focus on the "organizational inertia" that developed within the USPHS to explain how the study began and why it continues.² As compelling as Jones's analysis is, he nevertheless failed to address two primary questions about the Tuskegee research: what exactly formed its ideological underpinnings; and, how did ideology and institution building converge to ensure that the study would continue for forty years?³ These questions linger despite the avalanche of commentary that has appeared about Tuskegee and the torrent of attention surrounding a 1997 Presidential apology.⁴ The remainder of this chapter will attempt to answer these two questions by uncovering the heretofore hidden links between hereditarian teaching at the University of Virginia and the origins, implementation, and continuation of the so-called Tuskegee study.⁵

¹Allan M. Brandt, "Racism and Research: The Case of the Tuskegee Syphilis Study," *The Hastings Center Report* (December 1978), 21-9, quotation 27.

²James H. Jones, *Bad Blood: The Tuskegee Syphilis Experiment* (New York: The Free Press, 1981), 173, 176, 180.

³Jones, *Bad Blood*, 53.

⁴Clinton, William Jefferson. "Remarks in Apology to African-Americans on the Tuskegee Experiment, May 16, 1997," *Weekly Compilation of Presidential Documents* 337 (1997): 847-49.

⁵Much of what follows is developed from the first draft of a paper subsequently co-authored with Paul A. Lombardo. This discussion focuses more on the Virginia connections than on eugenics in the public health service. For a more detailed interpretation, see Paul A. Lombardo and Gregory Michael Dorr, " , " forthcoming in . See also, Gregory Michael Dorr, "Rearing Human Thoroughbreds: Eugenics, Medical Education, and Public Health," paper delivered at the American Association for the History of Medicine Conference, Bethesda, Maryland, May 21, 2000. I am aware of the dangers involved in referring to the study by its common name, "The Tuskegee Study." As concise as this title is, it obscures the responsibility that white USPHS officers bear for originating, implementing, and continuing this travesty of medical ethics and morality. I recognize that calling the Study of Untreated Syphilis in the Negro Male the Tuskegee Study overemphasizes the complicity of the Tuskegee Institute, its hospital, and its medical staff in aiding the study. Nevertheless, I will use the terms interchangeably to remind the readers that elites on both sides of the racial divide were indeed complicit in the abuse of poor black men and their families. The point in this dissertation is not to assign blame, but to understand how eugenic ideologies prompted both sides to support the study. Although blacks and whites had widely divergent goals, this medical

One answer explaining the origins and longevity of the study lies in the careers of the public health officers who launched it. As Surgeon General heading the Public Health Service, Hugh S. Cumming approved the study. His colleague, Assistant Surgeon General Taliaferro Clark devised and administered the study. Clark's successor, Assistant Surgeon General Raymond A. Vonderlehr, protected the study for the next decade of its life.⁶ These men shared two critical characteristics: they all attended medical school at the University of Virginia and each had been taught by serious disciples of the theories of eugenics. Hereditarian ideology prepared them to believe, even more than their nineteenth-century predecessors, in the genetic differences—in morals, in sexual behavior, and in differential susceptibility to and morbidity from a variety of diseases—between the black and white "races." As public health officials, these doctors continued to be influenced by eugenic arguments well beyond the point when serious challenges undercut eugenics elsewhere in the scientific and medical world. Why the USPHS would create a study examining the racial differences in syphilis pathology, and then continue it for forty years (thirty of which occurred after the advent of penicillin, the "magic bullet" cure for syphilis) becomes clear when understood in light of eugenic theory.

Virginia and its state university are deeply implicated in the Tuskegee study. Political machinations among Virginian politicians and University of Virginia alumni paved the way for University of Virginia School of Medicine graduates to fill key roles in the USPHS. Once these men were in place, the University of Virginia's historic commitment to public health, eugenics, and racial medicine insured that the USPHS recruited a disproportionate number of junior officers with hereditarian proclivities. James Jones is undoubtedly correct in concluding that the para-military organizational structure of the USPHS insured a

application of eugenics allowed them to collaborate at the expense of 600 black men and their families; all in the name of the "greater good" for black and white society.

⁶The original containment studies from which Tuskegee developed originated in 1930, the formal experiment measuring the effects of untreated syphilis did not begin until 1932. Raymond Vonderlehr retired in 1943.

certain degree of "organizational inertia." The existence of a University of Virginia "old boy" network within the USPHS, however, greased the wheels of this bureaucratic automaton, ensuring smooth transitions as leaders retired and younger men ascended to their positions. This informal association also ensured the appointment of similarly trained, like-minded physicians who made the continuation of the Study of Untreated Syphilis in the Negro Male a near certainty. While Jones and others have seen the study as a case of "'moral astigmatism that saw these black sufferers simply as 'subjects' in a study, not as human beings,'" they have insufficiently examined the root-source of that moral myopia.⁷ Ultimately, the ideological glue that held the study together derived from the power of the eugenic metaphor, which characterized disease, inherited susceptibility to disease, and differential morbidity from disease as inherited racial traits. The eugenic metaphor thus provided an explanation of disease pathology that allowed elite whites and blacks to pursue their own, albeit contradictory, public policy goals. Lost in this racial struggle were the 399 infected men and their uninformed families and lovers, all "subjected to science" and left to suffer the ravages of a terminal disease.⁸

* * * *

Political Inertia: Virginia, the USPHS, and the New South

Bureaucracies, by definition, operate in specific channels delineated by rigid organizational protocols. Governmental bureaucracies, in addition to dealing with the idiosyncrasies of inflexible structure, are also subject to the vicissitudes of partisan politics. The USPHS, from its inception as the Marine Hospital Service through its transformation to the para-military Public Health Service, is no exception.⁹ From its earliest days, the

⁷Jones, *Ibid.*, 14.

⁸An additional 201 uninfected men were used as controls. Exact numbers are a bit slippery, because physicians administering the study merely shifted men in the control group who contracted the disease to the study group. Jones, *Ibid.*, 1 and 176. "Subjected to science" is taken from Susan E. Lederer's fine study of human experimentation, *Subjected To Science: Human Experimentation in America before the Second World War* (Baltimore and London: Johns Hopkins University Press, 1995).

⁹The Marine Hospital Service was reorganized into the United States Public Health Service by act of Congress in 1912. Jones, *Bad Blood*, 31.

USPHS served as a battleground for partisan politics, providing sinecures for political cronies and ladder-climbers. Moreover, in the years between 1870 and 1920, as the South reestablished itself within the arena of national politics, the USPHS became a favorite institution through which southerners exerted political power and advanced pro-southern public policy. Regional and partisan considerations, rising to the fore in Woodrow Wilson's administration, created and sustained a decidedly southern, distinctly Virginian cast to the personnel and programs of the USPHS. From the President to the Secretary of the Treasury to the Surgeon General, top USPHS officials in the 1920's all seemed to have ties to Virginia and its state university. Indeed, this connection assured a continuity of personnel all trained within the same institutional and social culture, ensuring a uniformity of belief with regard to African Americans, venereal disease, and public health.¹⁰ This common political and ideological background would help reinforce the foundations of the Tuskegee study.

Doctor Rupert Blue, recognized as the first modern Surgeon General to concern himself with the scientific study of public health, understood the political aspects of his position.¹¹ In 1898, while lobbying for more stringent quarantine and rat eradication programs to eliminate epidemics, he tapped a young assistant surgeon in the Marine Hospital Service to curry political favor for the USPHS. Blue ordered his fellow University of Virginia alumnus, USPHS officer Dr. Hugh S. Cumming, to call upon Dr. E. G. Booth to support the USPHS before Congress. Cumming was uniquely qualified for this assignment: Booth was not only a physician and a Virginia congressman, he also happened to be

¹⁰Jones noted a "clearly discernible bureaucratic pattern" in the promotion of USPHS officers involved with Tuskegee. Jones failed, however, to investigate what effect the common educational background of the three most important founders of Tuskegee might have had upon the experiment's origins. Jones, *Bad Blood*, 130-131.

¹¹See Blue's entry in *The National Cyclopædia of American Biography*, vol. 40, (New York: James T. White and Company, 1955). Blue may have been the most famous of American sanitarians at the turn of the century, his fame accentuated by his success in containing first the 1903-04 and then the 1907 outbreaks of bubonic plague in San Francisco, where he demonstrated the first-ever effective measures of plague control. See also Ralph Chester Williams, *The United States Public Health Service, 1798-1950* (Washington: Commissioned Officers Association of the United States Public Health Service, 1951).

Cumming's father-in-law. Young Cumming displayed his own political acumen by arousing Booth's sectional interest in support of the proposed measures. "In the 1st place," Cumming wrote his father-in-law, "I believe these bills are the best thing for the country especially our Southland." Cumming then appealed to Booth's personal concern, "I have been asked to exercise every influence and a good show will probably give me [and by extension Booth's daughter] good stations in the service."¹² Cumming knew that helping Blue win approval for the USPHS bills would not only advance the USPHS, it would also increase provisions for southern public health, and not incidentally, advance his own career. During Blue's tenure as Surgeon General, which extended through Woodrow Wilson's administration, Cumming's career rose as a direct result of his dedication to the service and his region.

Woodrow Wilson embodied the paradox of southern progressivism. Wilson had the ability, as C. Vann Woodward put it, "to hesitate between the Old and the New," vacillating between traditional southern views of race and culture and new "scientific" ideas about society. Born in Virginia, reared in Georgia, educated for a time at the University of Virginia, Wilson's background steeped him in southern culture and sectional allegiance. Wilson took his advanced degrees at Johns Hopkins in Baltimore, "the last refuge of the Confederate spirit in exile and a lying-in hospital for the birth of the New Order."¹³ Passing through "the gateway between ambitious Southern youths and the cosmopolitan world of scholarship," Wilson learned that slavery had been a gentle institution, that the races could be ranked hierarchically, and that, with proper management, the South could

¹²Hugh Smith Cumming to E. G. Booth, 1/4/98, Hugh Smith Cumming Papers, Accession Number 9622, box 3, 1898-1913 folder, Alderman Library, Charlottesville, Virginia. (Hereinafter referred to as Cumming Papers, box number: folder title and date: page number if applicable).

¹³C. Vann Woodward, *Origins of the New South 1877-1913* (Baton Rouge: Louisiana State University Press, 1951), 162. Wilson spent two years at the University of Virginia studying law. Paul Brandon Barringer, "Memoirs of Dr. Paul Brandon Barringer," vol. 2, ed. Anna Barringer, 2588, box 8, 344-345, Special Collections, Alderman Library, Charlottesville, Virginia. (Hereinafter referred to as Barringer Memoir: box number: page number.) This manuscript was eventually published as Barringer's autobiography, *The Natural Bent*.

regain her national prominence.¹⁴ Not only was Wilson trained in apologist scholarship, but he was surrounded, both at Hopkins and later as President of Princeton, by the emerging sciences of social control: hereditarian social sciences (biologically informed sociology and psychology) and eugenics. Throughout this period, and during his term as New Jersey's governor, he embraced the rising Progressive Era ethos that championed the rational management of society through bureaucracies administered by scientifically-trained experts.

Woodrow Wilson's presidential election served as a watershed for North-South relations. The first southerner elected to the presidency since Louisiana's Zachary Taylor in 1848, Wilson symbolized sectional reunification. While northern and southern soldiers fighting alongside rather than against each other during the Spanish-American War had done much to diminish sectional tensions, Wilson's ascendance seemed to indicate the resumption of southern power in national politics. Watching Wilson's first inaugural parade from his apartment window, future Surgeon General Hugh S. Cumming wrote his mother, "The view was superb and Old Virginia walked away with all the first prizes....Every one thinks he [Wilson] has picked a splendid family of cabinet officers from Bryan down and we feel the South has come into her own."¹⁵ Southerners dominated Wilson's cabinet, both houses, and many appointive federal positions. For all the rhetorical promise of sectional reunification and Progressive reform, these men set to "building empires on a base of unchallenged seniority" thanks to the Democratically "solid" South. Ultimately, Wilson "offered little or no opposition to the forces, North and South,

¹⁴Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992), 422. Wilson took his doctorate in history under Herbert Baxter Adams who, along with Columbia's William A. Dunning, "bred a generation of scholars who 'discover[ed]' that Southern slavery had been benign and that Reconstruction had been unjust." Ayers, *Promise of the New South*, 423. Hopkins was also the seat of proto-eugenic and eugenical race theory at the turn of the century.

¹⁵Hugh Smith Cumming to Mother, March 18, 1913, "1898-1913" folder, Box 1, Cumming Papers.

that kept the region barefoot and bigoted."¹⁶ President Wilson surrounded himself with southerners who espoused "the racial doctrines that left their stamp on Wilsonian progressivism."¹⁷ This result was not surprising from a man who declared D. W. Griffith's 1915, white-supremacist film *Birth of a Nation* to be, "like writing history in lightning," a history that was, in the president's estimation, "all so terribly true."¹⁸

Among the men greeting Wilson in Washington was fellow-Virginian, Representative Carter Glass. Described by John Egerton as "aristocratic and tightly wound," Glass replaced Wilson's son-in-law William G. McAdoo as Treasury Secretary. Reminiscing years later, Hugh Cumming made explicit the sectional import of this shift. "On December 5, 1918," Cumming wrote, "President Woodrow Wilson, himself a native of Virginia, appointed an outstanding Virginian, Representative Carter Glass, as Secretary of the Treasury—a move that proved ominous for Surgeon General Blue whose term would end before the close of the Wilson administration."¹⁹ Glass searched for a frugal administrator to run the USPHS. He "was determined to appoint a Virginian as successor to Blue,"

¹⁶John Egerton, *Speak Now Against the Day: The Generation Before the Civil Rights Movement in the South* (New York: Alfred A. Knopf, 1994), 46. For the extent of Southern dominance see, Woodward, *Origins of the New South*, 480-481.

¹⁷C. Vann Woodward, *Strange Career of Jim Crow* (New York: Oxford University Press, 1974), 92.

¹⁸Griffith used quotations from Wilson's *History of the American People* as intertitles in his silent classic, which extolled the Ku Klux Klan and excoriated Reconstruction as a crime upon the South. Historians present conflicting accounts of the circumstances surrounding Wilson's White House screening of *Birth of a Nation*. Arthur S. Link, Wilson's hagiographer, while noting that, "Wilson publicly affirmed his belief that the total separation of the races was the policy that would bring the greatest benefit to the Negroes," described the arrangement to view the film as, "a trap," and makes no mention of Wilson's endorsement of the film. Arthur S. Link, *Wilson: The New Freedom* (Princeton: Princeton University Press, 1956), 253. Richard Schickel, Griffith's biographer, notes that while, "No one has been able to fully authenticate" Wilson's statement, the widespread publication of the quotation—and Wilson's failure to disavow it—give it credibility. Richard Schickel, *D. W. Griffith: An American Life* (New York: Simon and Schuster, 1984), 270; 619 note 5. George B. Tindall's estimation of the film and Wilson's remark is probably the most balanced: "In light of the film's wide circulation and popularity one could hardly exaggerate its significance in fixing for a generation the popular image of Reconstruction or in preparing the way for a revival of the Klan." George B. Tindall, *The Emergence of the New South 1913-1945* (Baton Rouge: Louisiana State University Press, 1967), 186-187.

¹⁹Hugh Smith Cumming, unpublished memoirs, Cumming Papers, 5: Memoirs of General Hugh S. Cumming: 268. Cumming's memoir, running to over 1000 pages, is haphazardly paginated; page numbers cited herein refer to machine stamped page numbers on the typescript. (Hereinafter referred to as Cumming Memoir, box number: chapter number and/or page number.)

who, although educated at the University of Virginia, was born in North Carolina.²⁰

Aging Surgeon General Rupert Blue recommended fellow University of Virginia Medical School-alumnus, Hugh Smith Cumming, to replace him. Secretary Glass nominated Cumming, a Virginia Democrat of great dedication and proven thrift.²¹ Wilson appointed Cumming Surgeon General in 1920.

Blue and Cumming began a pattern of Virginia graduates ascending through the ranks of the USPHS. While Wilson and Glass obviously operated out of forthright partisan and sectional loyalties, Rupert Blue and Hugh Cumming founded an elite intra-bureau cabal comprised of southern-born University of Virginia graduates. This source of institutional inertia, a "good-old boy" network between the USPHS and the University of Virginia Medical School, imbued USPHS officers, particularly members of the Division of Venereal Diseases, with a distinctive professional outlook born of a common institutional heritage.

Other evidence indicates that the University of Virginia funneled many men into the ranks of the Public Health Service. Cumming appointed University of Virginia alumnus Taliaferro Clark as Assistant Surgeon General in charge of the Division of Venereal Disease. Clark recommended another Virginia alumnus, Raymond A. Vonderlehr to succeed him as Assistant Surgeon General heading the Division of Venereal Disease. Moreover, as USPHS Doctor George B. Young wrote Lewis Williams of the University of Virginia's governing board, "a large precentage [sic] of the men who have and are doing the best work under the [USPH]Service control are also Virginia graduates."²² A thorough study of USPHS duty rosters indicates that native-Virginians who were also University of

²⁰Cumming Memoir, 6: Chapter 13, 24. Cumming remembered Glass's short list for the position as being comprised of himself, Leslie L. Lumsden, and Claude H. Lavinder. All three men were born in Virginia and educated at the University of Virginia. *Ibid.*, 32.

²¹Cumming Memoir, 5: 269. Cumming wrote constantly, in his contemporary personal correspondence to his wife and in his later memoirs, about his endless attempts to encourage thrift, efficiency, and hard work among USPHS officers. He was largely successful, as most tributes to him on his retirement cite this as one of his signal achievements.

²²G. B. Young to Lewis C. Williams, 13 January 1931, "W (1930-31)" folder, Box 23, President's Papers, .491, subseries I. Young served on the Joint Health Department of the County of Albemarle, City of Charlottesville, and University of Virginia.

Virginia graduates comprised at least eight percent of the USPHS's commissioned officer corps between 1918 and 1938. Fully ten percent of the USPHS claimed Virginia birth. University of Virginia alumni born in Virginia and elsewhere held at least 13 percent of the USPHS commissions for the same period.²³ Indeed, the number of Virginians in the service appears to peak in 1923, three years after Hugh Cumming's ascent to the surgeon generalcy, with at least 16 percent of the commissioned corps being Virginia alumni. These men rotated through the USPHS's various service stations, including the Tuskegee study in Macon County, Alabama.²⁴

It is also clear that the men who left Virginia for service in the USPHS maintained close ties with the University. Men like Cumming and Vonderlehr remained in touch with alumni groups representing both their undergraduate and medical classes. Like concerned alumni elsewhere, Cumming and Vonderlehr actively lobbied for programs they thought would enhance the prestige of the medical school. Eventually, both men focused their efforts, because of their interest in syphilis research as an important branch of public health organization, on supporting Professor Dudley Crofford Smith's attempts to strengthen the

²³The USPHS rosters indicated place of birth and year of commission; Virginia alumni directories listed year of graduation, degree received, and profession—"U.S.P.H.S." for these men. The percentage of Virginia natives is as precise as possible, based upon comparison of every officer listed as a Virginia native with alumni directories and student directories. Fully 10 percent of the USPHS came from Virginia between 1918 and 1943, with 74 percent of all Virginians graduating from the University of Virginia. Identifying officers born elsewhere but graduated from Virginia posed a significantly greater challenge. This percentage is based on checking USPHS rosters at five year intervals (1918, 1923, 1928, 1933, 1938, 1943, 1948) against all available Virginia alumni lists. Gaps in the publication of alumni lists (no listing was published between 1922 and 1930, nor between 1932 and 1980) may have allowed men to graduate from Virginia, enter and leave the USPHS or die, without their service being noted. The years 1918 and 1938 signify important years in USPHS history: 1918 was the year the Division of Venereal Disease was organized and 1938 represents the last year before an explosive growth in the size of the corps prompted by the Venereal Disease Control Act of 1938. Searches for 1943 and 1948 revealed 5 and 4 percent of the USPHS officer corps being Virginia alumni, but these numbers are artificially depressed for two reasons: the lack of any alumni lists between 1931 and 1981, and the expansion of the USPHS that began in 1939. The author is indebted to Dr. John Parascandola, Historian of the USPHS, for help obtaining USPHS rosters.

²⁴Jones, *Bad Blood*, 157-159.

University of Virginia Medical School's Department of Syphilology and Dermatology—the first in the South.²⁵

USPHS officers maintained more than informal institutional associations with Virginia and its syphilology program. While Cumming and Vonderlehr took interest in Smith's studies out of a desire to see the medical school enter the top-flight of American medical education, they had other reasons to lobby for syphilology at Virginia. The University provided the facilities and staff for extensive investigations into malaria, public sanitation, and syphilis. As a result, Albemarle county was a logical site for a syphilis containment study conducted by the USPHS with funding from the Julius Rosenwald Foundation. This study was one of five precursors to Tuskegee, ostensibly undertaken to gauge the prevalence of syphilis in black populations.²⁶ The Albemarle county study was administered by a "Joint Public Health Board" that melded the efforts of Albemarle County and the City of Charlottesville with the University of Virginia, all under the umbrella of the USPHS. This marriage of city, county, federal, and university personnel created a situation in which Cumming and Vonderlehr could serve three masters: they funneled much needed money to Smith and the struggling Department of Dermatology and Syphilology, they advanced research into venereal disease among blacks, and they served their homeland by increasing the visibility of and funding for southern public health initiatives.

The Rosenwald study in Albemarle added momentum to the political and institutional inertia affecting public health efforts. The hierarchical relations between the USPHS, the Virginia State Board of Health, and the Joint Board of Health effectively bonded nation to state to county to city to university. The individuals involved further closed ranks because they were all Virginians and almost to a man graduates of the University of Virginia. They

²⁵Edward P. Cawley, *A History of the Department of Dermatology: University of Virginia*, (Privately Published, 1987), 1. Cumming and Vonderlehr's interest peaked in the late 1930s and early 1940s, as will be explained below.

²⁶Jones, *Bad Blood*, 60, 74.

shared an ideological heritage that privileged notions of public health, assumed the hereditary inequality between the races, and reinforced the physician's role as public health researcher and administrator. This common background also presumed the white man's role as paternalistic caregiver for the southern black population. All of these preconditions set the stage for the ethical abuses committed during the Study of Untreated Syphilis in the Negro Male. Perhaps the signal hallmark feature of these men's medical education was its hereditarian focus emphasizing the eugenical aspects of public health—particularly with regard to venereal disease.

* * * *

Early Eugenic Theories, Public Health, and Syphilis

As the first four chapters revealed, major advances in science rocked medical training in the latter half of the 1800s. Scientists coupled Charles Darwin's evolutionary theory with August Weismann's conception of an immutable hereditary factor, the so-called "germ-plasm," and Gregor Mendel's incipient genetics. This combination prompted physicians and scientists to investigate whether observed differences between individuals and groups mapped to hereditary predispositions. Doctors had long noticed that different groups appeared to react in distinct ways to the same pathological organism. With the ascendancy of hereditarian thinking, the apparent differences in disease symptoms—the way a disease "presented" upon examination—might be understood as a function of heredity. The strength of a person's "constitution" took on an entirely new aspect as it was linked to notions of inborn quality. At first this mode of thinking provided doctors with a heuristic device to understand heredity as a factor conditioning disease pathology. Over time, however, the hypothetical function of this hereditarian analysis fell away. Doctors increasingly accepted the existence of hereditary differences in disease susceptibility and pathology. Interest in the etiology, pathology, and epidemiology of disease combined with hereditarianism to create biological determinism. Disease or its absence became a marker

not only of illness, but also of racial difference, and superiority or inferiority. The obverse also became a truism: physicians "knew" that certain races were foci of disease, veritable reservoirs of germs. Germ plasm thus marked one as a germ carrier, and being diseased stigmatized one's germ plasm in circular fashion. This reasoning allowed doctors and scientists to cloak their cultural prejudices about marginal populations under the mantle of scientific public health intervention. Pronouncements of social degeneration became medical rather than moral diagnoses.

"Degeneration theory," the notion that an individual's physical and psychological flaws stemmed from inborn biological predispositions and not environmental effects, is as old as Christianity. According to some theorists, beginning with the fall of Adam and Eve (at the hands of Eve, the inherently "inferior" creature), all humanity degenerated from a state of perfection. Degeneration, while applying to all humans, also had a racial component, assuming that the different races "declined to different degrees, whites least and blacks most."²⁷ The Virginia eugenicists—particularly Paul Barringer, Harvey Jordan, Robert Bean, and Lawrence Royster—all built on degeneration theory and eugenics as they constructed theories of racial medicine.

During the first decades of the twentieth century, physicians increasingly attributed pathological conditions to inborn errors and debility. In addition to gross physical abnormalities, doctors associated susceptibility to disease with inherited defect—making a link between the incidence of congenital disorders like clubfoot and infectious diseases like tuberculosis. Epidemiology no longer looked solely to destroying pathological organisms, but also to skimming germinal weaknesses out of the gene pool. Eradication of genetic susceptibility served two beneficial purposes. First, it would offer permanent control over

²⁷Stephen J. Gould, *The Mismeasure of Man* revised edition (New York: W. W. Norton, 1991), 71. Gould presents a detailed account of the development of scientific racism as applied to notions of intelligence, indicating its connection with eugenics but not developing that involvement in his text. For a detailed exposition of the relationship between scientific racism and eugenics see, Chase, *Legacy of Malthus*; and Carl N. Degler, *In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought* (New York: Oxford University Press, 1991).

certain diseases. Second, it would result in an improved human "stock"—the population would fill with inherently resistant, and therefore fitter and healthier humans. Eugenacists and public health advocates thus made natural bedfellows.²⁸

The global outlook of the eugenics movement—attempts to improve the entire population—predisposed eugenacists to use the language, metaphors, and programs of public health advocates.²⁹ Doctors began to view "bad" heredity—colloquially known as "bad blood"—as a pathological condition similar to infectious diseases like yellow, typhoid, and scarlet fevers, polio, plague, and venereal disease. Eugenically minded physicians and scientists, therefore, refocused their efforts from therapeutic cure to prevention. These doctors attempted to stop disease by eradicating not only pathological organisms, but also the hereditary predisposition to illness. Rather than sterilizing the environment, they sought to sterilize the individual. Failing sterilization, they sought to monitor the genetically susceptible, in an effort to contain disease within the hereditarily "weak" population.

The diseases most often attributed to genetic susceptibility included cancer, venereal disease, tuberculosis, and pellagra.³⁰ These conditions puzzled physicians of the

²⁸Although Dr. Charles B. Davenport often decried public health efforts as helping the unfit to survive, he made numerous speeches in which he outlined his views on the consonance between the two fields. For example see Charles B. Davenport, "Eugenics in Relation to Medicine, (n.d.)" TMs; and "Heredity of Disease, (n.d.)" TMs, Charles B. Davenport Papers, American Philosophical Society Library, Philadelphia. [Hereinafter referred to as Davenport Papers.]

²⁹This mode of analysis was suggested by Martin Pernick's excellent essay, "Eugenics and Public Health in American History," *American Journal of Public Health* 87 (November 1997), 1767–72. Pernick notes that eugenacists and public health advocates could also be at odds. Extreme eugenacists viewed any environmental intervention that reduced mortality as dysgenic. Such methods allowed the unfit to survive longer, increasing the possibility that they might produce more of their kind. By far the vast majority of American eugenacists eschewed this extreme position, and argued that public health was desirable from a humanitarian and a eugenic perspective. Public health, in this eugenic model, alleviated the suffering of the unfit, providing palliative care until they died naturally in a humane fashion. At the same time, improved conditions allowed the hereditarily fit to develop to the full extent of their inborn potential. Eugenacists of this bent argued that negative eugenic measures, implemented alongside public health measures, would prevent the procreation of more unfit. Debora Kamrat-Lang explores the attempt by eugenacists to coopt medicine's authority through the use of medial language in, "Healing Society: Medical Language in American Eugenics," *Science in Context* 8 (1985): 175–96.

³⁰For a discussion of attempts to isolate a hereditary factor in disease see Chase, *Legacy of Malthus*, 42–43 (tuberculosis); 204, 212–25 (pellagra).

nineteenth and early-twentieth centuries. Doctors found them hard to diagnose, nearly impossible to treat successfully, and even more difficult to understand from a pathological viewpoint. The observation that the diseases seemed to "run in families," or affect discrete segments of the population, often overwhelmed any considerations of environmental causation. Doctors then concluded that some hereditary component must be the dominant factor determining infection and morbidity. While physicians readily agreed that "Disease germs are the most democratic creatures in the world," knowing, "no distinction of 'race, color, or previous condition of servitude,'" they did not agree that all germs attacked all people with equal malignancy.³¹ Although the tubercle bacillus, for instance, could harm everyone, not everyone developed tuberculosis. The severity of the illness, moreover, varied between sick individuals. Put another way, some people appeared predisposed to certain afflictions; additionally, certain diseases seemed to have qualitatively different affects upon their victims.

Since the diseases most often identified as having a hereditary component tended to be endemic and/or epidemic in nature, they were seen as dire public health hazards. Doctors took a preventative approach toward these diseases, seeking to stop infection by eradicating the conditions—environmental, biological, and hereditary—that allowed the maladies to flourish. The language defining public health and eugenical reforms materially affected the programs adopted and the goals defined. Public health officers consistently utilized martial metaphors—attempting to "win the battle" against and "wipe out" various scourges.³²

³¹Dr. L. C. Allen, "The Negro Health Problem," *American Journal of Public Health* 5 (1915), 194; quoted in Jones, *Bad Blood*, 43. Jones overstates the degree to which the progress of "science" removed racial blinders from public health physicians in the early twentieth century. He also neglects the fact that the Progressive Era's fascination with "expertise" and "reform" had a dark side -- social control in the name of social reform -- preferring instead to focus only on paternalism and environmentalism in progressive thought. Jones, *Bad Blood*, 32-44.

³²Perhaps this language stemmed from the fact that the USPHS was itself a paramilitary organization. Surgeon General Thomas Parran wrote, "the whole public health program. . . may be stated very simply. It consists of alertness along the entire front of preventive medicine to make sure that ground gained is held and gains consolidated; and a concentrated attack upon those sectors where the greatest saving of human life can be made." The military and economic metaphors are unmistakable. Parran, *Shadow on the Land*, 52.

Eugenicists sought to "defend" humanity from the "menace" of various "racial poisons," be they bacteriological like syphilis, or genetic like dementia praecox. This martial discourse emphasized eradicating the root cause of contamination—bad germs or germ plasm.

The striking congruence between public health and eugenic idioms becomes apparent when one compares the principle programs advocated by both groups. While the USPHS centered its activity around the triad of quarantine, fumigation, and eradication, the eugenics movement emphasized segregation, sterilization, and euthanasia. Quarantine of infectious individuals achieved precisely the same public health goal as eugenic segregation of feeble-minded individuals from normal ones. Both programs isolated contaminated individuals to prevent them from affecting the healthy. Quarantine effectively interrupted disease transmission from infected to uninfected people. Institutional segregation similarly interrupted the transmission of a hereditary taint—feeble-mindedness, physical abnormality, susceptibility to disease—by preventing sexual intercourse. Fumigation, the attempt to disinfect areas contaminated with bacteriological threats, mirrors the eugenical attempts to make sterile those "infected" with bad heredity. In both instances, the vector of transmission is rendered inoperable, whether it is a germ or the germ cell. Finally, eradication—the attempt to kill carriers of disease such as mosquitoes and rats—parallels euthanasia, the killing of human carriers of hereditary debility.³³

Casting the problems and their solutions in such terms created a common "cultural ethic" within the public health and eugenics movements. Eugenicists and public health officials focused upon the "common good" and "society's health" in its broadest terms. Both movements tended to emphasize a top-down, bureaucratic, authoritarian approach. In the eyes of eugenicists and public health enthusiasts, sustaining the public weal justified

³³Although euthanasia was generally considered too radical a measure, barred from adoption by popular sentiment, evidence exists pointing to its practice in America. The most celebrated cases revolved around Chicago physician Harry Haiselden, who withheld treatment from "unfit" infants until they died. See Martin S. Pernick, *The Black Stork: Eugenics and the Death of "Defective" Babies in American Medicine and Motion Pictures Since 1915* (New York and London: Oxford University Press, 1996).

virtually any abridgment of personal liberty. Thus, protecting the larger society justified coercive state intervention: mandating vaccinations regardless of an individual's rights or beliefs seemed not only advisable, but constitutional and progressive.³⁴ Indeed, Justice Oliver Wendell Holmes made this connection explicit in his opinion affirming the constitutionality of eugenical sterilization. "The principle that sustains compulsory vaccination," Holmes averred, "is broad enough to cover cutting the Fallopian tubes."³⁵ These sentiments tended to make society the patient, reducing the individual to the level of a malignant organism within society.³⁶

This mode of discourse, likening the health of society to the health of the body and the threat of inferior heredity to the threat of disease, worked against the creation of a therapeutic ethos that sought to solve problems by healing individuals. As Deborah Kamrat-Lang put it, "The sick themselves, rather than their diseases, became the menace; when the term 'patient' was replaced with the term 'cacogenic person,' [hereditarily unfit person] healing was no longer a matter of curing an ill person but rather one of ridding society of his offspring."³⁷ In the public health arena, the sick suffered equally the stigmatization of being simultaneously carriers and genetic propagators of disease. And, in the case of poorly understood diseases—such as pellagra, tuberculosis, and syphilis—patients themselves, rather than the biological agent affecting them, became the target of investigation and control. The twin goals of prevention and eradication moved in lock-step to insure that public health officials viewed sick people as "sources of infection" rather than as patients, threats to society rather than sick individuals. As Dr. Kenneth Maxcy of the University of Virginia Medical School wrote in 1932, "The primary purpose of the Department of Preventive Medicine and Bacteriology is to promote the concept of

³⁴The controlling precedent for the compulsory vaccination of school children came in *Jacobsen v. Massachusetts*, 197 U.S. 11 (1904).

³⁵*Buck v. Bell*, 274 U.S. 200 (1927), 205.

³⁶Kamrat-Lang, *Healing Society*, 177.

³⁷*Ibid.*, 181.

preventive medicine in the medical curriculum and to develop in the prospective practitioner of medicine an appreciation of disease as a community and social as well as an individual problem."³⁸

In addition to the depersonalizing effects of public health and eugenic discourse, medical educators had long referred to patients treated in academic or research settings as "material." In the University of Virginia catalogue—which was by no means exceptional—course descriptions refer to "ample clinical material," meaning copious cadavers and sick people available for student practice. Individuals that private physicians would term patients became, in the educational setting, pedagogical instruments serving medical training.³⁹ The Virginia course guide made particularly significant distinctions. Cadavers, tuberculars, and individuals seen in syphilology were referred to as "clinical material," while other afflicted individuals—such as those seen in surgery—were termed "cases" and "patients."⁴⁰ Dichotomizing sick individuals into "cases" and "material" served to dehumanize the ill, especially those lumped into the latter category.⁴¹ This lexicon, and its

³⁸Kenneth F. Maxcy to George B. Zehmer, 3 March 1932, Presidents Papers: .491: 1: 3: "Articles on University" (1932-1933), 2.

³⁹In part, this practice reflects the attempt to instill "professional distance" in prospective physicians. Such a pedagogical culture highlights the ideology used to keep medicine "an autonomous, self-regulating profession whose members were in firm control of the terms, conditions, content, and goals of their work." Jones, *Bad Blood*, 95. Bedside manner was seen as ancillary to the maintenance of professional authority in an era that emphasized physician's directive rather than collaborative role in determining therapeutic care. This phenomena held particular sway when physicians considered the treatment of African Americans, whom many doctors considered ignorant and in need of "force fed" therapy if it was to be effective. Dr. Joseph Earle Moore referred to the men as "clinical material" in correspondence with Taliaferro Clark, as they established the protocols for the Tuskegee study. Jones, *Ibid.*, 105.

⁴⁰This distinction holds throughout virtually the entire run of course catalogs. See University of Virginia, *Catalogue and Announcements: Department of Medicine* (Roanoke: The Stone Printing and Manufacturing Company, 1899-1950).

⁴¹With regard to black patients, the Virginia course guide dehumanized them further. For nine years, at the turn of the century, during the nadir of American race relations, the description of the medical school course in obstetrics stated, "The large negro [sic] population in the neighborhood of Charlottesville affords a class of patients which present all the difficulties to clean work that are afforded by ignorance and poverty. No better practice can be had for one who is trying to educate an 'aseptic center.' If asepsis can be secured in a hovel it can be preserved in a palace." Blacks also presented an available population willing to be treated by inexperienced medical students. The course description continued, "The student is thus taught how to manage cases by himself and at the same time avoids falling into the slovenly habits he is sure to form without proper guidance." University of Virginia, *Catalogue and Announcements* (Roanoke: The Stone Printing and Manufacturing Company, 1899-1907).

implicit taxonomy, conveyed to medical students a subtle but powerful message about the relative value of human lives. Moreover, the disproportionate "amount" of black and lower-class "material" seen, particularly in the gross anatomy dissecting room and the syphilis clinic, only reinforced this message, effectively cementing racial and class attributes to "material."⁴² Medical schools socialized their students to view blacks and poor people (as well as syphilitics and tuberculars) as objects for study and experiment, rarely for treatment. Individuals in these groups could thus be considered within a different moral schema, one emphasizing dispassionate research into prevention rather than therapeutic cure. Given this ideational background, it is not surprising that physicians viewed the black men in the Tuskegee study as "subjects" and "material" valuable only in so far as they served the ends of the study, with little attention to their "worth" as independent, sentient human beings.⁴³ Taking a longer view, if the feeble-minded, as a group, could be

⁴²While the label "material" undoubtedly served to begin to socialize a sense of "professional detachment" in neophyte physicians, helping them lose their squeamishness about dead bodies, it is more problematic when used to refer to live patients. Photographs of the Virginia Medical School "Cadaver Club," featuring future-Surgeon General Hugh S. Cumming and his classmates, depicting students embracing the cadavers in "humorous" positions, had a double edged effect: while the men lost their squeamishness about corpses and entrails, they also lost their compassion for the people most of those bodies used to be -- poor, lower-class whites and blacks. The Virginia photographs feature African-American cadavers and the emaciated cadaver of a malnourished white male. Things apparently had not changed much since Paul Barringer was in school and "We were hard pressed for anatomical material, as the state laws [for the procurement of cadavers] were inadequate, and public sentiment was not then cultivated in our favor. We bought, begged, and stole. . . ." Barringer Memoirs, 326. By the 1910s, Virginia medical students received the cadavers of executed criminals who died in Virginia's electric chair. Medical students regularly engaged in robbing the graves of poor whites and blacks to obtain bodies for dissection. For a discussion of the social origins of most cadavers -- and the disproportionate representation of blacks and lower class whites, see, David C. Humphrey, "Dissection and Discrimination: The Social Origins of Cadavers in America, 1760-1915," *Bulletin of the New York Academy of Medicine* 49 (September 1973): 819-827.

⁴³The USPHS itself referred to patients as "material." See, Department of the Treasury, *Annual Report of the Surgeon General of the Public Health Service of the United States for the Fiscal Year 1938* (Washington: Government Printing Office, 1938), 128-29. At least one other Virginia physician publicly proclaimed that "The Future of the negro lies more in the research laboratory than in the schools." Thomas W. Murrell, "Syphilis and the American Negro: A Medico-Sociologic Study" *54 Journal of the American Medical Association* 11 (January-March, 1910), 848. For accounts of physicians poor bedside manner and racial disposition to poor blacks in Tuskegee, see Jones, *Bad Blood*, 80-81. Jones asserts that, when the Rosenwald Fund discontinued its support for the syphilis containment studies, "There can be no doubt that Dr. [Taliaferro] Clark would have preferred to return to Macon County [site of the Tuskegee experiment] to treat rather than study syphilitic blacks." Jones, *Bad Blood*, 92. While this is perhaps true, Jones unnecessarily discounts the ideological underpinnings of a study created to examine racial differences in the pathological manifestations of syphilis. Such an experiment could only serve to reinforce eugenic and

conceived of as a malignancy within the body social, so too could the black population.

Eugenic notions of inferiority, transferred to the medical and public health arena, exerted a profound effect on how physicians approached patients.

The discourse framing public health, eugenics, and medical research thus shaped perceptions of disease and disease sufferers. Eugenic identification of certain groups and individuals as inferior and susceptible to disease increased the repugnance felt toward them by members of the "normal" population. In the context of the University of Virginia, eugenics justified long-standing cultural beliefs about the inherently diseased nature of African Americans. Scientific racism and public health, combined in the crucible of "New South boosterism," yielded an ideological amalgam that eugenicists fashioned into an instrument for excising "inferior" individuals from southern society.

Public Health Service doctors, acting under the rubric of medical research, initiated a series of clinical trials that abused African Americans and sought to prove their biological difference.⁴⁴ Ironically, the USPHS coopted and perverted philanthropic desire to improve the lives of Southern blacks when it instituted these eugenically-informed syphilis studies. Funded by the Julius Rosenwald Foundation, the original six syphilis studies tested public health physicians' ability to "contain" syphilis within black populations; they did not seek to "cure" syphilis in individual black patients. These six precursors to Tuskegee

racist preconceptions already held by Clark and others. As Jones notes, nothing about the study would re-educate the physicians who spoke of "corralling" the men during the yearly "roundups": "The work made no emotional demands on the health officers because. . . [it] did not require them to develop person-to-person relationships. They never got to know them as patients or as people." Jones, *Ibid.*, 187. Jones cannot reconcile his own statements that the USPHS undertook the study because the officers involved were "racial liberals. . . interested in black health" with the fact that these same officers believed, "The men's status did not warrant ethical debate. They were subjects, not patients; clinical material, not sick people." Jones, *Ibid.*, 172, 179. The fact that only men were included in the study highlights the inherent gender bias of medical research that took male health as the benchmark for all human health until the 1980s. Jones explains the deceptions used to mislead the female relatives of the Tuskegee study participants, Jones, *Ibid.*, 165.

⁴⁴Coincidentally, during 1932–1933, just as the USPHS study was beginning, Dr. Charles B. Davenport visited Tuskegee to make anthropometric measurements of African American children for use in elaborating his study on race crossing. Davenport visited in February of 1932 and sent Morris Steggerda back in April of 1933. See Charles B. Davenport to Major R. R. Moton, February 15, 1932 and April 6, 1933, Davenport Papers.

administered, in Surgeon General Cumming's words, "treatment in infectious cases in reasonably adequate amount to render them no longer infectious."⁴⁵ Since the USPHS and local public health authorities lacked the money and resources to effect cures, and because officials believed that blacks would not comply with treatment until cured anyway, containment became the least common denominator for therapy.

By the time the Rosenwald Foundation pulled funding in late 1930, removing the money to subsidize curative therapy, "state officials were most concerned with patients who were infectious," because they posed a two-fold threat.⁴⁶ First, since sick workers are not productive workers, syphilis patients lowered the efficiency of a large portion of the southern labor force. The Rosenwald Fund's president, Michael M. Davis cast the issue in precisely these terms when evaluating the success of the initial containment programs. These studies, he asserted, proved that syphilis was "a problem of the first magnitude affecting not only public health [whites and blacks] but the vitality of a large proportion of the population and their efficiency as workers."⁴⁷ Second, at least since Paul Brandon Barringer, white physicians repeatedly argued that endemic black syphilis infection posed a threat to white health. Despite cultural taboos regarding sex across the color line, whites—of all classes and genders, although white men were most explicitly acknowledged—often engaged in illicit sexual congress with blacks. Should such liaisons result in infection,

⁴⁵Cumming, quoted in Jones, *Bad Blood*, 89. Jones argues that, "By rejecting racial and moral explanations of mortality and illness, public health officials shifted the debate over black health to an environmental analysis and insisted that scientific medicine and modern public health management could benefit blacks." Ibid., 44. While this is undoubtedly true, Jones underestimates the degree to which a desire to improve black health was predicated on the desire to preserve white health. The choice merely to render infected blacks noninfectious represented a hobson's choice between what was "medically possible" and "economically feasible," but it also stood as testimony to the desire to reserve scarce resources for populations most likely to take full advantage of them. Blacks, contemporary wisdom held, could not be counted on to take the full course of treatment even if it was offered, so why waste the time and money trying to provide it? Instead, Doctors opted for the bare minimum of treatment necessary to reduce the threat syphilitic blacks posed to healthy whites. See, Jones, Ibid., 57.

⁴⁶Jones, Ibid., 99. The Rosenwald Fund, suffering great losses in the stock market crash, severely constricted its philanthropic activity.

⁴⁷Davis, quoted in Jones, *Bad Blood*, 87. As Jones states earlier, "public health officials never tired of reciting figures documenting the economic cost to the nation of neglecting black health. Black illnesses threatened not only whites' health, but also white pocketbooks." Ibid., 34.

syphilis could then spread to the white community through transmission from infected to non-infected whites. Even more troubling for southern moralists and public health officials, the scourge gained entry into white households not only through infected married men, but also through infected domestic workers. These individuals, who were involved in the most intimate details of daily life from food preparation to wet-nursing babies, became another "menace" facing white society.⁴⁸ Ultimately, white physicians' apparent concern for black health actually masked their deeper fears about the safety and health of whites in contact with diseased blacks.

All of these factors—the common training of the directing officers, cultural and scientific racism, the dehumanization of afflicted people, and the protection of white public health in the name of black health—paved the way for the Study of Untreated Syphilis in the Negro Male. Charlottesville's containment study displayed many of the characteristics that made the Macon County study infamous. The initial Albemarle County syphilis study began in 1930 and ended in late 1931, but USPHS and university collaboration on syphilis research—particularly in relation to infected African Americans—continued until 1947. University studies concentrated on black patients, neglected to attain informed consent, and occurred within a professional culture that accepted notions of innate biological difference between races, and that society should be structured and health care provided with those differences in mind. Examining how this institutional culture affected medical training and the studies in Albemarle County reveals how the Virginia study and Virginia medical education conditioned the development of the Tuskegee experiment.

* * * *

"Extremely Pernicious Anti-Eugenic Factors": Venereal Disease as Racial Poison

⁴⁸For examples of this rhetoric, see the discussion of Paul Brandon Barringer and Harvey Ernest Jordan's papers on syphilis in chapters 1 and 2.

Public health and eugenics clearly played prominent roles in the curriculum of the University of Virginia Medical School. As will be recalled from Chapter 1, Dr. James Lawrence Cabell founded Virginia's first State Board of Health in 1872.⁴⁹ Cabell was also a charter member, in 1878, of the American Public Health Association, he became its president in 1879, and as a result of these positions he was appointed president of the first national Board of Health from 1879 to 1883.⁵⁰ Not surprisingly, Cabell inspired many of his students to champion public health.

Paul Barringer, one of Cabell's protégés, "considered the possibility of entering the Marine Hospital Service (which was the forerunner of the public health service)," at Cabell's behest. While Barringer ultimately did not enlist in the Marine Hospital Service, he helped to reinvigorate Virginia's state public health organizations. During an outbreak of Asiatic cholera in 1893, Virginia's Governor Phil W. McKinny tapped Barringer as a member of a newly reconstituted and funded state board of health. During World War I and the influenza pandemic following the war, Barringer also volunteered his service to the state board of public health.⁵¹ At Barringer's behest, the University of Virginia constructed its hospital—giving medical students direct access to clinical experience, and increasing the community's access to health care. Finally, just as Cabell produced Barringer's interest in public health, Barringer inspired future Surgeons General Rupert Blue and Hugh Cumming, Assistant Surgeon General and Director of the Division of Venereal Disease Taliaferro Clark, and numerous other members of the USPHS.⁵² Hugh

⁴⁹The General Assembly created it without an expense appropriation, so this first board achieved relatively little. Roy K. Flannagan, "Dr. Paul Brandon Barringer," (Address before the Alumni Association of the University of Virginia, June 7, 1941) Barringer Papers: 1: loosely filed: 5.

⁵⁰*Ibid.*, 5.

⁵¹*Ibid.*, 6. Barringer drafted a hasty but comprehensive memo on the public health aspects of cholera, "Cholera and its Prevention: a Circular by the State Board of Health" (Richmond, 1893). This memo represented cutting edge medical technology and it fueled Barringer's interest in public health.

⁵²Blue, Clark, and Cumming took physiology and surgery under Barringer: Blue and Clark in 1889-90, and Cumming in 1891-92. When Blue and Clark took Barringer's course, it emphasized histology and pathology, as well as "modern aseptic surgical procedure." By the time Cumming took the course, it included work in "hygiene" which included, "contamination of water, food, air and soil. . . the natural history of the contagious and infectious diseases, their modes of propagation and methods of prevention.

Cumming regarded Barringer as, "one of the most brilliant intellects I have known."⁵³

Barringer's intellect left an indelible stamp on the minds and careers of his students.

Just as a concern with public health runs through the history of the University of Virginia, so too does a strain of hereditarian and eugenic thought. While Cabell and Barringer taught their students a respect for public health, they taught with greater intensity about the power of heredity over humanity's destiny and health. After these men died or retired, a new cast of characters, hired in part on the recommendation of Paul Barringer, took their place and surrounded themselves with like-minded physicians and scientists. From the turn of the century onward, the University of Virginia and its medical school became infused with a hereditarian ideology that investigated, and presumed to prove, the biological differences separating the "races" of mankind.

James Lawrence Cabell, in addition to championing public health, was an early and vigorous proponent of hereditarianism.⁵⁴ Cabell understood evolution as a function of heredity. He contended that, "animals may acquire structural characters, differing in many respects from those of the parent stock, and then transmit such peculiarities to their own offspring with entire constancy, so as to give rise to a new breed."⁵⁵ Most significantly, however, from the standpoint of what he taught his students and their later actions, Cabell wrote that the, "tendency to the regular transmission to offspring of characters acquired by the progenitors of a stock, in the gradual process of acclimatization, furnishes an entirely

Instruction is also given in the proper location and construction of habitations, hospitals, barracks, etc., stress being laid upon the modern methods of heating, ventilating and draining." Cumming also took materia medica under Barringer in 1893. See, University of Virginia, *Catalogue and Announcements*, (Richmond: Everett Waddey, 1889-1890) viii-ix, 28. Also, for the year 1890-91, ix, 59, 63, 65; and 1891-1892, 44; and 1892-1893, ix, 59; 1893-1894, 69.

⁵³Cumming Memoir, 6: 773. One of Barringer's eulogists, a former student and Virginia public health official, Roy K. Flannagan wrote that, "He had the facility of making his words live before the eyes, exhibiting the talent of a born teacher. . . . His genius as a teacher impressed me most and stands out in my mind ahead of any other aspect of his truly distinguished career, beyond even that of his great administrative ability." Roy K. Flannagan, "Dr. Paul Brandon Barringer," (Address before the Alumni Association of the University of Virginia, June 7, 1941) Barringer Papers: 1: loosely filed: 4.

⁵⁴This is discussed in detail in Chapter 1.

⁵⁵James Lawrence Cabell, *Testimony of Modern Science to the Unity of Mankind* (New York: Robert Carter and Brothers, 1859), 22, 36.

satisfactory explanation of the alleged immunity enjoyed by our negroes from attacks of yellow fever and malarious disease."⁵⁶ Cabell thus differentiated whites and blacks on the basis of heredity, and conferred upon blacks a biologically determined, differential susceptibility to disease. Thus, while Cabell promoted the idea of monogenism—descent of all men from one common ancestor—he divided blacks and whites into biologically and medically separate races. Cabell's protégé, Paul Barringer, as was discussed in Chapter 1, extended his mentor's analysis. Barringer believed fully in the power of heredity and the biological differences between the races.

Evidence also reveals a long-standing concern with syphilis, as both a public health and a eugenical threat, within Virginia's medical school community. Virginia paved the way in syphilology in the South, mounting a self-conscious effort to improve the public health and release the brake on economic productivity engaged by a syphilitic population. Particularly revealing in this regard are the papers written by Paul Barringer and Harvey Jordan.⁵⁷ These papers set the tone for the university's training regarding syphilis, which in turn influenced the career of Virginia's resident syphilologist, Dudley Crofford Smith. Beginning with Barringer and continuing with Jordan, Cumming, Clark, Smith, and Vonderlehr, members of the university medical school understood syphilis as a racial threat.

Barringer's first public address as a newly-minted, scientifically trained doctor described syphilis as both a hereditary and an infectious hazard. He stated that, "By inheritance and contagion, (mediate and intermediate) syphilis is now becoming one of the most common of diseases."⁵⁸ Barringer also identified its public health aspect, claiming that "So little attention is paid to this disease by our legislative bodies and sanitary boards" that society was inviting disaster. Worse still, in Barringer's eyes, was that "The

⁵⁶Cabell, *Testimony of Modern Science*, 38.

⁵⁷Each of these works is discussed in detail in Chapter 1 and 2, respectively.

⁵⁸*Ibid.*, 90.

unoffending as well as the offender often suffer together, for some of those who go down to the slums" and get infected with the disease, "come from the sanctity of the marital chamber."⁵⁹ Barringer's rhetoric—redolent with images of immoral black and poor white prostitutes infecting white men—clearly identified the guilty parties for his audience.

Barringer's solution to this threat relied on the rhetoric of public health and eugenics. The scourge of syphilis could be eradicated through "an armamentarium of therapeutical ordinance at our command" which only required the physician to "get the range."⁶⁰ In other words, the solution for this plague preying on the South should be determined by elite-driven, statist intervention in matters of individual sexuality and health. For Barringer, enactments by "legislative bodies" enforced by "sanitary boards" composed of scientific men could arrest the spread of the disease. Writing in the first flush of successful treatments with heavy metals (primarily mercury applied in a transcutaneous salve or inunction), which caused symptoms to disappear and was taken for a cure by many physicians, Barringer still invoked the rhetoric of therapeutic cure. This language of therapy and cure shifted to a hope for containment after it was discovered that mercury alone failed to cure syphilis. Therapeutic discourse returned when Dr. Paul Ehrlich discovered his "magic bullet" cures, Salvarsan and Neo-Salvarsan. Triumph waned to a defensive wariness again, when Ehrlich's medicines were shown to be unreliable in effecting permanent remissions.⁶¹ Cure or no cure, Barringer understood the racial nature of the threat, "This yearly increasing addition of infected blood cannot fail to have its

⁵⁹Ibid., 89. Similar fears and tales of contagion making its way into the "sanctity of the marital chamber" appeared 54 years later in Surgeon General Thomas Parran's classic, *Shadow on the Land: Syphilis* (New York: Reynal and Hitchcock, 1937), 13–14.

⁶⁰Paul Brandon Barringer, "An Essay on Constitutional Syphilis," (in two parts) *North Carolina Medical Journal* 12 (1883): 89–95, 137–45, quotation 145. Barringer's injunctions are all the more arresting when one realizes that *Spirochaeta pallida*, the organism responsible for syphilis, was not positively identified under the microscope until 1905. Allan M. Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (New York and Oxford: Oxford University Press, 1985), 40.

⁶¹Both of these are trade names for the arsenical compounds, arsphenamine and neo-arsphenamine, that Ehrlich discovered and pioneered. Allan M. Brandt presents an excellent summary of these advances in, *Ibid.*, 40–42.

influence upon the stamina of the race or fail to affect, however remotely, all the constitutional ills of its subjects."⁶² As a racial poison, syphilis threatened the very existence of white society and civilization.

A similarly millennial tone characterized the eugenical writing of Harvey Ernest Jordan. Writing in 1912, as chairman of the Eugenics Section of the American Association for the Study and Prevention of Infant Mortality, Jordan made explicit the link between venereal disease and dysgenic effects on society. "A serious consideration of the widespread prevalence and racial harm of the 'social diseases' leaves no shadow of doubt that they are fundamental and extremely pernicious anti-eugenic factors." Jordan felt that, "nothing short of criminal negligence still prevails almost universally in the matter of protecting both the present generation and the future race against the dangers of syphilis and gonorrhœa [sic]." Since, "No interest can be paramount to that of the race," Jordan believed that, "There can be no loftier motive than that to aid in the production and universal establishment of the highest type of physical, moral and intellectual man within the limits of human protoplasm."⁶³

In this quest for "human thoroughbreds," Jordan demanded that, "all questions of practicality and constitutionality must give way to *right*. Nothing can be more practical than the elimination of economic and racial inefficiency."⁶⁴ Although Jordan seemed to ignore different races—using the word race as a meta-category for all humanity—it must be remembered that his appeal to create the "highest type" of man implicitly excluded all non-whites, who by eugenic racial definition were inferior "types." He knew, through his science and his common sense, that black domestic workers stood behind the spread of

⁶²Ibid., 90.

⁶³Harvey Ernest Jordan, "The Eugenical Aspect of Venereal Disease," 3 *Transactions of the American Association for the Study and Prevention of Infant Mortality* (1912-1913): 156.

⁶⁴Jordan, Ibid. Jordan used the term "human thoroughbreds" to describe the goal of eugenics in a number of his works. For example, Harvey Ernest Jordan, "Eugenics: The Rearing of the Human Thoroughbred," *Cleveland Medical Journal* 11 (1912): 875.

syphilis and other venereal diseases in the white population.⁶⁵ In a few sentences, Jordan wove together the filaments of public health, eugenics, venereal disease, and notions of economic efficiency—creating a blanket ideology that smothered individual rights in the name of society's interests.⁶⁶ Jordan's fear of the threat posed to "innocent" and, as he termed it, "racially noble" stock prompted him to proffer radical solutions that relied on centralized, bureaucratically controlled enforcement mechanisms.

Venereal disease eradication as a eugenic problem, in Jordan's eyes, posed greater difficulties than "preventing the reproduction of ordinary defectives" who could be rendered innocuous by sterilization. Jordan argued for a four-part solution: registration, detention, legal prohibition to marriage, and "eradication" of prostitution. Registration of infected individuals would allow the public "to protect itself" by identifying and controlling carriers. Jordan acknowledged that registration would be expensive; however, he felt that compared to the "\$100,000,000 [spent] annually caring for its deficients and unfortunates, this expense is a mere bagatelle." Jordan admitted that fear of registration would drive some infected persons to "continue untreated, become more virulent foci of infection and...suffer needless incapacity, and die a needless death in consequence." This loss, however, should be viewed as part of an "inevitable transition phase from the old to the new order of things," nothing came without a price. Sacrificing the lives of certain individuals in the name of protecting the larger (white) public was to be expected and accepted as the cost of eradicating disease.⁶⁷ Detention, or a forced segregation of infected individuals, seemed expensive, too. Jordan argued, however, that compared to the racial "cost" of "anti-eugenic factors" like syphilis, wars, tobacco, liquor, and narcotics, the cost of detention was scant. Wishing to avoid contributing to "unbearable burdens in the shape

⁶⁵See the analysis of Jordan's paper in Chapter 2.

⁶⁶Jordan later wrote, "The personal liberty and individual comfort of the unfortunates [those suffering from venereal infections] need, and should, be regarded to that extent not incompatible with the full protection to society and the race." *Ibid.*, 157.

⁶⁷*Ibid.*, 159.

of enormous demands for the support of ever-increasing misery and incompetence," Jordan hoped that, "we might become willing to sacrifice the enjoyment of superfluous comforts for this altruistic end of racial salvage," which offered the "promise of permanent solution." Jordan promoted venereal disease eradication through images of altruistic self-sacrifice, all in the name of protecting the race. Restricting infected people's right to marry did not entail great economic cost. Instead, efforts to achieve the appropriate legislation confronted, "legislative conservatism, clerical and institutional opposition, medical professional ethics, and the universal traditional feticism [sic] of 'personal liberty' and 'equal rights.'"⁶⁸ Quoting Dr. Charles Eliot favorably, Jordan asserted that it "is absolutely inconsistent with all other public health measures that. . . patients with syphilis or gonorrhœa [sic], should be allowed to keep these diseases secret." Nevertheless, Jordan hoped that the obvious danger to the public health posed by venereal diseases would allow "a common sense educational propaganda" to overcome opposition to restrictive measures.⁶⁹

In evaluating the first three components of his proposed solution, Jordan consistently invoked economic rationales over therapeutic benefits. Jordan's driving motivation came from a desire to be cost-efficient, not from a desire to heal sick people, perhaps a predictable position from a man who was not himself a medical doctor.⁷⁰ His campaign against prostitution mounted a similarly instrumental, economic challenge. Estimating "white slave traffic" as costing the United States "\$3,000,000,000 annually," Jordan bemoaned the fate of "potentially useful young women" and "the best of the young manhood of our country" who engaged in prostitution because "the consequent suffering and sterility of their later marriage mates, and the blasting of little children's lives, presents

⁶⁸As a result of just this type of lobbying, many states passed laws requiring blood tests of all couples seeking marriage licenses; in order to marry people needed to be certified disease free. Virginia passed such a law in . . . Also, during World War I in Virginia, any woman found near a military base could be quarantined, without due process, until tested for venereal disease.

⁶⁹*Ibid.*, 160.

⁷⁰Although Jordan became dean of the medical school, he held a Ph.D. in cellular anatomy, not an M.D.

a picture truly appalling."⁷¹ Prostitutes, aside from providing a locus of infection, wasted their economic potential and degraded that of others. By spreading syphilis, prostitution caused the birth of babies that "die from native debility, an inaptitude for life, a lack of what may be termed 'biologic capital.'"⁷² As Jordan put it, "for the life of the nation and the race [prostitution] *must be abolished*. And the fact must not be ignored that it is perhaps as much an economic and social as a moral problem." Relying on the eugenic and public health rhetoric rather than the language of clinical, therapeutic discourse, Jordan argued that syphilis and gonorrhea "should be treated as *disease*, and the same methods employed for [their] control and eradication [sic] as are followed in similar non-shameful diseases, namely, universal notification and strict isolation."⁷³ Jordan makes no mention of curative therapy, only custodial segregation.

The strong resonance between Paul Barringer's 1883 address and Harvey Jordan's paper thirty years later are not coincidental. Both men aligned themselves with a long tradition of racist thinking about health, medicine, venereal disease and their relation to African Americans. Most physicians and researchers in the late-nineteenth and early-twentieth centuries could not disentangle objective epidemiological investigations and observations from cultural biases regarding blacks, black sexuality, and disease.⁷⁴ Barringer, Jordan, and the rest of the faculty at the University of Virginia were no exception to this pattern. Indeed, these men read and cited approvingly this racist scholarship, and they produced more of it themselves. As late as 1932, Robert Bennett Bean wrote that African Americans "have an almost alarming [hereditary, racial] susceptibility to tuberculosis and venereal diseases, and their birth rate is diminishing more

⁷¹Ibid., 161.

⁷²Ibid., 158.

⁷³Ibid., 163.

⁷⁴Jones, *Bad Blood*, 16-29; Lawrence Hammar, "The Dark Side to Donovanosis: Color, Climate, Race and Racism in American South Venereology," *Journal of Medical Humanities* 18 (1997): 36-40.

rapidly than their death rate."⁷⁵ Precisely this belief in the differential susceptibility to disease motivated these men's students—Hugh Cumming, Taliaferro Clark, Raymond Vonderlehr, and the other commissioned officers of the PHS who graduated from Virginia—to establish and continue the Study of Untreated Syphilis in the Negro Male.

* * * *

The USPHS in Charlottesville and Tuskegee: Questions of Training and Ethics

"If Dr. Clark was the father of the experiment, Dr. Vonderlehr became its chief guardian and protector," James Jones wrote of Tuskegee.⁷⁶ To extend the metaphor then, Surgeon General Hugh S. Cumming, the ranking official under whom the study began, must be regarded as the experiment's grandfather. Moreover, behind these public health officials stood the serried ranks of eugenicists on the University of Virginia medical faculty—the true ideological forebears of the Tuskegee study. James Jones asserted that, "Compared with the real black-baiters of the day, however, the racism of these health officers was mild" and "the USPHS officials behind the Tuskegee Study were racial liberals by the standards of the 1930s."⁷⁷ Attempts to discredit the power of the ambient cultural racism of 1930s America fail to understand the origins and power of prejudice. Regarding the USPHS officers in charge of Tuskegee, trying to normalize their racism fails to account for the influence of the racist scientific tradition in which these men were trained. USPHS officers' training and involvement with the organized eugenics movement had a

⁷⁵Robert Bennett Bean, *The Races of Man: Differentiation and Dispersal of Man* (New York: The University Society, 1932), 53.

⁷⁶Jones, *Bad Blood*, 131. Taliaferro Clark first articulated the idea for the study. Jones, *Ibid.*, 91.

⁷⁷Jones repeatedly emphasizes that, "Health officials persisted in the belief that racial differences existed in susceptibility, severity, and complications of diseases" and, "The health officers also believed that syphilis in blacks was fundamentally a different disease from syphilis in whites," yet he does not see fit to remark on the racism inherent in these beliefs and the fact that these beliefs could be used to prove the existence of qualitative biological differences between blacks and whites. Jones, *Bad Blood*, 41, 172. The USPHS officials do not come close to passing any reasonable litmus test of racial liberalism for the period; they were racial moderates at best. Moreover, being a liberal in the South did not necessarily mean advocating racial equalitarianism. For accounts of the activities of committed southern racial liberals, see, Egerton, *Speak Now Against the Day*, passim.

direct effect on how they approached syphilitic blacks in both Macon County, Alabama and Albemarle County, Virginia. These men's actions stemmed directly from the institutional nepotism and ideological homogeneity that characterized the USPHS in this period.

Hugh S. Cumming maintained personal and institutional ties to the eugenics movement. During his first year as Surgeon General, Cumming approved the appointment of Charles Benedict Davenport as a special consultant to the USPHS. Davenport would chair a course on eugenics at a special ten-day USPHS Institute for the intensive study of the problems of venereal disease control.⁷⁸ Cumming himself became a member of the American Eugenics Society and served on its advisory council in 1923.⁷⁹ He also regularly represented the United States at the Latin American eugenics conferences, especially the Pan American Conference of Eugenics and Homiculture.⁸⁰ Cumming also maintained a personal friendship with Virginia Medical School professor and eugenicist Lawrence Royster, staying at his home when visiting Charlottesville.⁸¹

Cumming's personal correspondence reveals that he thought in eugenical and racist terms. Writing to his wife in 1912 from a post at Colonial Beach, Virginia, Cumming remarked, "Things here seem to be very unsatisfactory and slipshod all around. Just plain niggery."⁸² Upon arriving in England at the end of World War I, Cumming wrote that his

⁷⁸Claude C. Pierce to Charles Benedict Davenport, October 2, 1920, Charles Benedict Davenport Papers, American Philosophical Society Library, Philadelphia. The following six lectures comprised the course on Heredity and Eugenics: The Kind of People We Are; Heredity in Man; Birth Rates and Race Qualities; Principles of Eugenics; Race Improvement and Social Progress; Practical Next Steps. Davenport declined the offer to stay for the entire Institute and resolved to deliver the first two lectures. Claude C. Pierce to Charles Benedict Davenport, October 25, 1920, Ibid.

⁷⁹Mehler, "History of the American Eugenics Society, 1921- 1940," 328.

⁸⁰Cumming's assignment to these conferences merged his eugenic interests and his lifelong fascination with Latin and South American culture. Two of these conferences were held (1927, 1934)), and a third was planned for 1938, but changed to a Congress on child-rearing. Walter A. Plecker was in close contact with the organizer of these conferences, mainline eugenicist Dr. Domingo F. Ramos of Cuba. See Walter A. Plecker to Dr. Domingo F. Ramos, June 14, 1933, Box 4, Earnest Sevier Cox Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham. For information regarding these conferences, see Nancy Leys Stepan, *The Hour of Eugenics: Race Gender and Nation in Latin America* (Ithaca, NY and London: Cornell University Press, 1991), 178-94.

⁸¹Cumming Papers: 6: "Cumming Memoir": 783.

⁸²HSC to Lucy Booth Cumming, 11 December 1918, "Correspondence between Lucy Booth and H. S. Cumming, 1898 to 1941" folders, Box 3, Cumming Papers.

impressions were favorable, "And why should they not be, there is not a drop of any but this blood in me!"⁸³ Cumming explicitly invoked the rhetoric of racial purity in describing his reaction to the British, whose "blood" he shared; the French, however, displayed blood of "pretty ordinary type."⁸⁴ Describing the various troops in Marseilles, he noted, "French troops of all arms of native stock" mingled with, "French Algerians, Tureos, Zouaves, Desert Arabs and most repulsive the French blacks tall savage beast like creatures." Cumming also noticed that these troops "evidently disliked Americans," and remarked that, "some Southern fellows who know the nigger" confirmed his impression. Worried about the possibilities of racial intermingling, Cumming wrote, "I'm glad the French are repatriating them."⁸⁵ Reflecting on the sexual education of his son—keeping miscegenation, venereal disease, and lasciviousness in mind—Cumming counseled his son to chastity because, "arguments that one should gratify natures' instincts were often plausible but our religion and place in civilization infused restrictions to throw aside which led to disaster." He directed his son's attention to the relationship between miscegenation, venereal disease, and race suicide by invoking "the serious worry of all thoughtful men here [France at the end of World War I] as to the apparently inevitable doom of these perhaps the most brilliant intellectual people in the world" who fell prey to licentiousness.⁸⁶ Cumming's racial sensibilities buttressed his eugenical notions as he surveyed the war's aftermath. Cumming also initiated a study of the relationship between immigration and the incidence of insanity in the United States to determine if America's racial stock was being compromised. And, he established the national leper colony at Carville, Louisiana—permanently segregating another group seen as hereditarily tainted.⁸⁷ Altogether,

⁸³HSC to LBC, 20 December 1918, Cumming Papers: Ibid.

⁸⁴HSC to LBC, 4 February 1919, Cumming Papers: Ibid.

⁸⁵HSC to LBC, 9 December 1919, Cumming Papers: 4: 1919 folder.

⁸⁶HSC to LBC 26 April 1919, Cumming Papers: 4: 1919 folder; and, HSC to HSC, jr, 25 April 1919, Cumming Papers: 7: 1916-1920 folder, "HSC to HSC, jr." Cumming himself was no prude within marriage; many of his letters to his wife contain references to his sexual desire for her.

Cumming's views seem wholly congruent with those of his teacher Paul Brandon Barringer.

Cumming's estimation of the importance of venereal disease control also paralleled that of his former teacher. In his memoirs he wrote that, "during my whole career I felt that it was an important and legitimate function of the Federal Health Service to conduct research in the best methods for the control and cure of these [venereal] diseases." He stated that he was "very proud" that he "encouraged Dr. Vonderlehr" in his research into the serodiagnosis of syphilis.⁸⁷ As late as 1931, Cumming invoked hereditarian arguments in his approach to public health. In his presidential address to the American Public Health Association, Cumming asserted that, "recent discoveries in the sciences and their application to public health" revealed "that the strength of a people depends upon the moral, mental and physical health of its individuals." This revelation spurred the "realization that the public health is influenced by environment, heredity, industry economics, morality, education. The insanitary dwelling, the malarial stream, the syphilitic or idiot parent. . .all come within the sphere of the present public health movement."⁸⁸ In accepting the 1944 Snow Medal of the American Social Hygiene Association, Cumming acknowledged that despite new therapeutic remedies, "There remains, however, the biological factor. . .factors which differ in different localities, nations, races, social and economic conditions, and these must be considered in any regional or even national campaign."⁸⁹ While explicitly mentioning environmental factors in the incidence of venereal diseases, Cumming placed emphasis on the innate biological characters predisposing individuals of different races to

⁸⁷See Cumming's entry in the *National Cyclopædia of American Biography*, vol. E 1937-38, (New York: James T. White and Company, 1938), 279-82.

⁸⁸Cumming Memoir, 268-69.

⁸⁹Hugh Smith Cumming, "Presidential Address," *American Journal of Public Health* 21 (November, 1931): 1195.

⁹⁰Hugh Smith Cumming, "Acceptance Speech" Cumming Memoir: 5: ca. 1948: 4.

infection. Not coincidentally, Cumming surrounded himself with like-minded men, who promoted ideologically similar programs.⁹¹

When attempting to establish a working relationship with the Rosenwald Fund, Dr. Cumming selected his fellow Virginia-alumnus Taliaferro Clark.⁹² Clark, like Cumming, studied under Paul Barringer at the University of Virginia and entered the USPHS after graduating. In addition to working on standard USPHS details such as public sanitation and tropical medicine, Dr. Clark had engaged in immigration quarantine and mental testing between 1926 and 1929, in the aftermath of the implementation of the federal Immigration Restriction Act of 1924.⁹³ This eugenically motivated act not only set strict quotas on the number of immigrants allowed to enter America, it also mandated intelligence testing to ensure that America accepted only the best of the pool of potential immigrants.⁹⁴ In accepting his new duty as head of the Division of Venereal Diseases, Taliaferro Clark moved from a position that enforced eugenical policy on immigrants directly to a position that tested eugenical theory in its relation to venereal disease among blacks. In 1930 Clark officially took the reigns of the USPHS Division of Venereal Disease. He was instrumental in the establishment of the Rosenwald Fund studies, Tuskegee, and the continuing studies in Albemarle County, Virginia.

Taliaferro Clark personally selected Raymond A. Vonderlehr to lead the USPHS team in the Tuskegee study.⁹⁵ Vonderlehr, unlike Cumming and Clark, had been trained by

⁹¹Cumming's successor as Surgeon General, Thomas Parran, while a noted advocate of syphilotherapy, nevertheless hewed closely to ideas of racial difference in epidemiology, as is made clear in his classic *Shadow on the Land: Syphilis*, wherein he states, "Among primitive races, syphilis seems to result in more skin lesions than among present-day white races." Parran's notion of a hierarchy of races with whites superior to more primitive races of darker complexion, comports well with general eugenical theories of the time. Thomas Parran, *Shadow on the Land*, quotation 17, 35.

⁹²Cumming Memoir: 5: 406.

⁹³Jones, *Bad Blood*, 54.

⁹⁴For the eugenical basis of anti-immigration political lobbying and legislation, see John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1955), 150-153, 312-324. Chasc, *The Legacy of Malthus*, 289-301.

⁹⁵Clark knew Vonderlehr intimately, having chaired the USPHS examining board that admitted Vonderlehr to the service. Jones, *Bad Blood*, 108.

Paul Barringer's successors at the University of Virginia School of Medicine. Vonderlehr graduated in 1920 and, despite having transferred in for only his last two years, still managed to study under Harvey Ernest Jordan, Robert Bennett Bean, and Dudley Crofford Smith. At Virginia Vonderlehr began studying cardiovascular syphilis—the specific disease pathology to which blacks were widely believed to be most susceptible. By appointing Vonderlehr, Clark set in motion a self-fulfilling prophecy. Vonderlehr's personal and professional background led him to expect and to look specifically for cardiovascular complications in African Americans. Thus, it should come as no surprise that he found a "gold mine" of such pathology among black patients at Tuskegee. Throughout his administration of the study, he emphasized findings of increased cardiovascular syphilis, despite the fact that independent expert cardiologists seriously questioned his diagnoses.⁹⁶ The apparent existence of such pathological differences buttressed Vonderlehr's own cultural racism and professional myopia, imputing a validity to his conclusions that he was loath to abandon.

Far from being racial liberals, these men exhibited a keen sense of racial diplomacy as they manipulated the racial scruples of the people they met. Their machinations helped them to create a medical study that would substantiate presumed biological differences between the races. In every case, USPHS officials cast their inquiry in the terms their audience would most readily accept. When Taliaferro Clark needed to be diplomatic, as when he sought to reassure Michael Davis of the Rosenwald Fund, a man of truly liberal racial views, he could do so. "It is a matter of cooperation, not discrimination that the work is limited to the negroes," Clark wrote. Clark's ability to characterize Davis's concern for blacks as being "inspired by someone having an exaggerated race consciousness," weakens James Jones's conclusion that Clark was markedly liberal in his views on race.⁹⁷

⁹⁶Jones, *Bad Blood*, 121, 139-40.

⁹⁷Clark, quoted in Jones, *Bad Blood*, 75.

While the certainty that syphilis infected blacks and whites prohibited these physicians from claiming that syphilis was inherently a "black" disease, establishing racial differences in epidemiology allowed them to do the next best thing. Indeed, the very need to produce a "black counterpart" to the retrospective Oslo study of untreated syphilis in whites reveals that USPHS officers had already concluded that racial differences existed; they just needed to exploit this "unparalleled opportunity" to prove them.⁹⁸ The ideological significance of supporting prevailing opinion about racial differences in morbidity was not lost on Taliaferro Clark or other members of the USPHS, who claimed that, "This study [Tuskegee] will emphasize these differences."⁹⁹ As a result, Clark cast the study in terms presuming a professional "mandate" and without "any ethical or moral qualms about what he was proposing."¹⁰⁰

The confluence of these men's backgrounds, the need for money, and the racial mission of the Rosenwald Fund conspired to create studies limited to African Americans but focused on them as personifying disease rather than as sick people. The prevailing ethos at the USPHS, and the fact that it was largely guided by University of Virginia graduates, ensured that the syphilis studies carried out in Charlottesville would reflect the symbiosis between the two institutions.

The 1929-1930 Charlottesville containment study did not become the Tuskegee study for many reasons. The relative lack of infected people—the early study discovered a

⁹⁸Clark, quoted in Jones, *Ibid.*, 94. Jones hints at this one page earlier, "Anyone who was not predisposed to find differences might have looked at these facts [the results of the Oslo study] and concluded that the disease was affecting both races in the same way."

⁹⁹Oliver C. Wenger to Taliaferro Clark, quoted in Jones, *Bad Blood*, 106. Jones acknowledges how important it was to have a leading syphilologist, James Earle Moore of Johns Hopkins, remark that "Syphilis in the negro is in many respects almost a different disease from syphilis in the white." Jones, however, sees this remark as important only in giving justification for the study. This remark is also pregnant with implications for black/white relationships. Such an assertion paves the way for the claim that qualitative biological differences exist between blacks and whites; differences that have meaningful social and political implications for public policy. Thomas Parran, Cumming's successor as Surgeon General, and another exponent of the Tuskegee study, also firmly believed in the differential pathology of syphilis in blacks. Brandt, *No Magic Bullet*, 158.

¹⁰⁰Jones, *Ibid.*, 94.

syphilis rate of seven percent in Albemarle County as compared to 36 percent in Macon County—certainly played a major role. The intimate University community that, despite the strong prevalence of eugenical ideology and racial conservatism, contained a number of committed racial liberals who could challenge the creation of a study without provisions for treatment played another part.¹⁰¹

Nevertheless, the USPHS continued other studies in Charlottesville that paralleled the one conducted in Macon County. The close association between USPHS officers and the University of Virginia Medical School insured this result, despite the relative inability of the University or the University Hospital to contribute significant financial support to these studies. Ideologically, the USPHS and the university faculty remained aligned through the 1940s, only to diverge over the ultimate endorsement of penicillin as the nearest thing to a "magic bullet" cure for syphilis.¹⁰² The University of Virginia's Department of Syphilology and Dermatology, founded by Virginia alumnus Dr. Dudley Crofford Smith, rode the wave of syphilis research and control rising toward the end of World War I. Doctor Smith established the first full-time course in syphilology in 1919, and founded the Department of Syphilology and Dermatology in 1924.¹⁰³ The position of syphilology in the course title reflected Virginia's continuing concentration on syphilis as a disease of great importance.¹⁰⁴ Smith himself became an accomplished scientific investigator of the disease

¹⁰¹One might wonder how a minority of the all-white University of Virginia could have mounted a more effective challenge to a non-therapeutic experiment than did the officials of the Tuskegee Institute. A number of factors reveal the power imbalance that allowed Tuskegee to be coopted by the USPHS: white faculty members could challenge each other's research as equals in a way that black officials could not challenge white researchers; Tuskegee relied upon and trusted the Resenwald Fund in a way Virginia did not; federal paternalism toward blacks masked USPHS motives. All these conditions exceed the professional myopia that convinced white and black physicians in Macon County and elsewhere that this study was justified. For trenchant analysis of these questions see Susan L. Smith, *Sick and Tired of Being Sick and Tired: Black Women's Health Activism in America, 1890-1950*, (Philadelphia: University of Pennsylvania Press, 1995), 13, 34, 85-117; and Susan L. Smith, "Neither Victim nor Villain: Nurse Eunice Rivers, the Tuskegee Syphilis Experiment, and Public Health Work" 8 *Journal of Women's History* 1 (1996), 95-113.

¹⁰²Dr. Smith remained skeptical of penicillin's efficacy as late as 1947. Cawley, *A History of the Department of Dermatology*, 55.

¹⁰³*Ibid.*, 6-8. Virginia's program was one of only a handful of approved syphilology residency training programs in the United States -- there were only 15 by 1933.

¹⁰⁴In every other instance of which the author is aware, dermatology preceded syphilology in the course title.

who, one former student noted, "was at his best as a bedside teacher and as a director of graduate study and research." Smith approached the disease with such self-assurance that he "palpated syphilitic chancres bare-handed, to the shocked wonderment of recently arrived residents," completely unafraid of contracting the disease.

In part because of his collaboration with the USPHS, Smith produced a numerous scientific articles about the disease, its diagnosis and treatment. He was an early advocate of syphilis epidemiology, attempting to trace the sexual contacts of infected patients to find the sources of infection. By treating patients and contacts, Smith sought to control the disease's spread.¹⁰⁵ Smith maintained close personal and professional contact with Henry H. Hazen, one of the foremost theorists on the racial differences in syphilis, and a man whose science and position at Howard University did little to dull his racism.¹⁰⁶ Smith also worked closely with Johns Hopkins's Joseph Earle Moore, who gave crucial early support to Taliaferro Clark's desire to conduct the Tuskegee study.¹⁰⁷ Thus, Dudley Crofford Smith moved in the same professional circles, and manifested the same biases and preconceptions, as his contemporaries in the USPHS. His formal association with the USPHS, characterized by an extension of these racist tendencies, began in 1929.

In March 1928, the University of Virginia's President Edwin Alderman, always seeking to lift the University into the top-flight of academia by emphasizing its research capacities, asked then Assistant Dean of the Medical School Harvey Jordan about medical research. In response, Jordan prepared a brief report listing, among other things, nine

¹⁰⁵Smith's biographer gives Smith's tracing and treating program credit for the low incidence of syphilis discovered by the Rosenwald survey in 1930. Cawley, *Ibid.*, 10, 12.

¹⁰⁶USPHS records list Hazen's institutional affiliation as Howard University in 1920. C. C. Pierce to Charles B. Davenport, October 4, 1920 [and attached roster listing Hazen], Davenport Papers. Hazen held a joint appointment as Professor of Dermatology at Georgetown University and Clinical Professor of Dermatology at Howard University when he wrote his 1914 article "Syphilis in the American Negro," *Journal of the American Medical Association* 63 (August 1914), 463-66. Although Hazen was "convinced that syphilis was not more prevalent among [African Americans] than among the whites," he believed that, "The negro springs from a southern race, and as such his sexual appetite is strong." Hazen ascribed to the common wisdom that, "aneurysm and aortic insufficiency due to syphilis are commoner among negroes than among whites." (463 and 464)

¹⁰⁷Cawley, *Ibid.*, 13-14.

areas of significant research since 1900; this list prominently featured work in syphilis.¹⁰⁸

Seven months later, Alderman approached Jordan about undertaking a proposed investigation of an anti-pneumonia serum. Jordan replied, "This is exactly the sort of thing I desire to see in operation here, at least on a modest scale....It is very important to have work of this sort going on in our Medical School." While Jordan hesitated in accepting the pneumonia-serum project, he whetted Alderman's appetite for empirical research in clinical medicine, a hunger that would be partially sated by the Rosenwald Fund syphilis survey two years later.¹⁰⁹

Alderman desperately wanted to attract the Rosenwald Fund study to Virginia. Having saved the University's medical school from a merger with the Medical College of Virginia in 1921, Alderman sought ways to emphasize the necessity and benefits of the University's independent medical program. Unable to marshal the funds necessary to underwrite the University's contribution to the study, Alderman made an uncharacteristic move; he appealed directly to Julius Rosenwald himself. Mustering his southern gentility, Alderman wrote, "I am terribly anxious to see this study of the health problems of the negro, in this county, go on, and go on under the University's guidance. Therefore, I am making bold, and it is a boldness, to ask you to give me the \$2500 to complete this undertaking."¹¹⁰ Alderman enclosed a copy of a memorandum drafted by Dudley Smith and professor of public health and hygiene Kenneth Maxcy that called syphilis the "most important disease problem in the colored race in this country."¹¹¹ While no record of Rosenwald's reply

¹⁰⁸Harvey Ernest Jordan, "Statistics sent in by Dr. Jordan in March 1928 in response to Dr. Alderman's request," President's Papers, RG 2/1/2.472, subseries 7, box 21, "Medicine, School of, Dr. Jordan Statistics" (1928). Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter referred to as President's Papers: three-digit suffix: subseries: box: folder title and date.]

¹⁰⁹Harvey Ernest Jordan to Edwin Anderson Alderman, 25 October 1928, President's Papers: .472: 7: 20, "Medicine, School of," (1926-1929).

¹¹⁰Edward A. Alderman to Julius Rosenwald, 17 June 1930,

¹¹¹Dudley Smith and Kenneth Maxcy, "Memorandum to Dr. J. C. Flippin in regard to Proposed Syphilis Survey in Albemarle County" President's Papers: .491: 1: 16: "Medicine, Department of" (1930-1933), 1. Maxcy served in the USPHS after graduating from Johns Hopkins Medical School and before joining the faculty at Virginia.

exists in university files, apparently the appeal worked. Charlottesville was chosen as one of the study locations.

The Rosenwald studies would pioneer a new form of public health intervention, known as containment. The word containment had been used by public health physicians for decades, but in the late 1920s and early 1930s it took on a new meaning. Containment in this new sense meant limiting infection to a specific population, and stopping its spread. Containment may or may not involve a cure—in syphilis it did not entail curative therapy.¹¹² Containment offered a new, cost-effective form of disease control. Rather than expending all the resources necessary for a cure—a huge outlay of personnel, material, and time in the case of syphilis—containment posited rendering the disease non-infection. By effecting a remission of this sort, syphilis could spread no further. While those with the disease would still suffer its pathological effects, physicians seemed to think that the disease would be less aggressive, its symptoms less acute and debilitating.

Physicians in Charlottesville clearly understood the Rosenwald effort in terms of containment. Smith and Maxcy commented that the "campaign of education for the prevention of venereal disease...has been found to have distinct limitations," because of patient non-compliance. Blacks—it was believed by Smith, Maxcy, and other medical authorities—simply could not control their sexual urges or diligently follow treatment regimes.¹¹³ Smith and Maxcy noted that, "The treatment of a person with syphilis, even though incomplete, renders them non-infectious." While not promising cure, the study

¹¹²Raymond Vonderlehr and Taliaferro Clark's famous first study of Tuskegee, published with Junior officers Oliver Wenger and John R. Heller, opens with a statement that fairly defines containment. "A determination of the effectiveness of treatment in preventing the transmission of syphilis is one of the basic problems in the control of this disease. Second in importance to it is the effect which treatment has in preventing late and crippling manifestations." An efficient treatment that stopped the spread would be more desirable than a more costly treatment that would decrease secondary and tertiary suffering. R. A. Vonderlehr, Taliaferro Clark, O. C. Wenger, and J. R. Heller, Jr., "Untreated Syphilis in the Negro Male: A Comparative Study of Treated and Untreated Cases," *Venereal Disease Information* 17(January 1936): 260–65, quotation 260.

¹¹³Henry Hazen's article, cited in note 104 above, is an excellent example of this attitude. See also James Jones's thorough discussion of the conventional wisdom among syphilis specialists in *Bad Blood*, Chapters 2 and 3.

hoped to effect a "reduction in the incidence of syphilis" by "early and efficient treatment of as large a proportion of the cases in the population as possible." The treatment regime settled upon would not cure syphilis, it would merely render it non-infectious and, hopefully, slow its rate of spread and hence its incidence within the population.

Using the parlance adopted by the USPHS, the memo indicated that an "attempt would be made to reach as large a proportion as possible of the negroes of this county" offering them "a free examination for 'bad blood.'" All those presenting a positive Wasserman test "would then be given a thorough examination by a clinician and if evidences of syphilis were present would then be offered free reasonably complete treatment." Smith and Maxcy then speculated that approximately one-quarter of the blacks in Albemarle County, about two thousand people, would have syphilis.¹¹⁴

Among the positive results of the study for the county, Smith and Maxcy noted that, "a marked reduction of the incidence of syphilis should result in the prevention of a considerable amount of disability among this element of the population and a lessening in the burden in the care of indigents." Workers would be able to work, and indigents would not sap society's strength by diverting resources from the "worthy" poor. As for the university, the authors wrote that the study would help the newly created Department of Public Health and Hygiene to establish its reputation by contributing to "a study of the outstanding disease problem of this section" where "a definite and clear-cut result can be expected for the money which is to be expended." Economics, not cure rates, dictated the "efficiency" and success of the program. Beyond this immediate benefit, "The field work would afford unusual opportunity" for instructing advanced medical students "both in regard to the mode of attack on a medico-social problem and in the technique of examination and treatment of this important disease."¹¹⁵ The medical school would

¹¹⁴Smith and Maxcy, *Ibid.*, 3.

¹¹⁵Smith and Maxcy, *Ibid.*, 4.

burnish its reputation and provide an "unusual opportunity" for its students while creating an economic benefit for Virginia society.

The indeterminate nature of what, precisely, constituted adequate treatment of syphilis complicates any effort to evaluate the therapeutic value of this study. Examining the remaining evidence, however, it becomes clear that Albemarle County's African-American population, despite being targeted for "free, reasonably complete treatment," received very little care—particularly as judged by the accepted standards of the day.¹¹⁶ Treatment protocols—drug dosages and dosing schedules—designed to effect a cure or render a patient non-infectious varied over the years. Nevertheless, a generally accepted rule of thumb emerged by the 1930s. Curative treatment for syphilis consisted of approximately 30 injections of arsphenamine and an equal amount of bismuth or mercury inunctions over at least 18 months.¹¹⁷ An arbitrary goal set for the Albemarle County study called for 20 injections and 192 transdermal mercury rubs over 34 weeks.

The difference between the standard of care and the target for the Albemarle study represents the difference between cure and containment. Put another way, this discrepancy is the distance between rendering individuals disease free and rendering individuals non-infectious—with pathological symptoms still wracking their bodies. This gap also mirrors the priorities held by public health officials, expressed in retrospect by Surgeon General Thomas Parran: "When the patient comes for treatment, he must be made noninfectious. If possible, he must be cured. The first duty is to the community. The second is the human right of the patient. Temporary non-infectiousness of the patient is achieved by a few doses of arsphenamine."¹¹⁸ Parran's emphasis on the corporate good over the individual's rights highlights an important ideological contact-point between public health and eugenics.

¹¹⁶The following analysis is based on the rather spotty records remaining in the "Albemarle County" folder, Thomas Parran Papers, University of Pittsburgh, Pittsburgh.

¹¹⁷Thomas Parran codified this standard of care in his 1937 book about syphilis *Shadow on the Land: Syphilis* (New York: , 1937), 28–29, 233.

¹¹⁸Parran, *Shadow on the Land*, 255.

The segregationist imagery of containment and noninfectiousness underscores this convergence. This is particularly significant when the disease under consideration also happened to be considered a "racial poison" potentially capable of harming the "germ plasm" and known to be congenitally transmitted. In light of these concerns, containment takes on a decided eugenic cast: it was a treatment strategy designed to limit the transmission of a "racial" taint at the same time it limited the negative pathological consequences to a population already viewed as dysgenic. Keeping African Americans non-infectious but sick would achieve a number of ends. It would heighten the dysgenic pressure on the black population, it would limit the expenditure of precious health care resources on an "inferior" and "non-compliant" group, and it would protect "superior" whites and make more resources available for their care. Public health protestations to the contrary, the treatment protocols reveal that the attitude toward patients with syphilis, and especially black patients with syphilis, fell far short of compassionate caring.

Available records reveal that, on average, African Americans in the Albemarle study received 8.2 injections each, along with 45.6 mercury inunctions, 21.5 doses of potassium iodide, and .6 doses of bismuth. These numbers miss the targeted minimum by a rather large margin. Retrospectively, Surgeon General Thomas Parran confessed that this treatment record was "not good enough," adding lamely, "but even so, many infectious cases were eliminated and many person-to-person epidemics stopped." The numbers, placed in context, reveal that physicians administered the bare minimum in an effort to find the lowest dose necessary to contain the disease within the black population and defend the white population from infection.¹¹⁹

The lack of treatment afforded blacks in Albemarle County becomes striking when compared to the amount of therapy whites received through the university hospital.

¹¹⁹The averages presented here were calculated from tables listing the total number of doses administered during the Charlottesville study, tallied by year and monthly. These tables reside in the "Albemarle County" folder, Parran Papers. Surgeon General Parran presented additional figures and analytic commentary retrospectively in *Shadow on the Land*, quotation 188.

Historically, officials considered the University of Virginia Hospital a non-segregated institution. Since African Americans had access to treatment within the hospital, despite being confined to separate, poorly-equipped wards, white officials considered the facility "integrated," ignoring the segregation in space and the different quality of treatment rendered. Despite state subsidies for indigent care, the hospital remained financially strapped and preferred to treat patients on a fee-for-service basis, which further reserved the best care for whites. This was particularly true in the massively underfunded Department of Syphilology and Dermatology.¹²⁰ Given all of these factors, white patients probably dominated the hospital syphilis clinic, despite the lower overall incidence of syphilis in the white population and whites' greater access to private medical care. White patients received curative treatment, while blacks would be rendered non-infectious—again invoking the sterilization/segregation aspects of public health and eugenics. Curing syphilis in whites, the eradication of syphilis spirochetes from their system, effectively sterilized the racial poison. Containing syphilis in blacks, rendering the disease non-infectious but not necessarily non-pathological, segregated the disease—quarantining it within the bodies of infected blacks, leaving them permanently stigmatized and potentially ill. Comparing hospital statistics and figures from the Albemarle County study reveals that white patients received more complete care. On a month-by-month basis, African-American patients received 1.5 arsphenamine injections on average, while white patients received 4.8 injections per month in 1933—the year after the Rosenwald Fund study ended. Even when they were the focus of the containment effort, and the cost of drugs was subsidized, African-American patients received less treatment than did the average

¹²⁰Financial reports from the hospital's administrators are preserved in the President's Papers. They reveal that the hospital regularly ran a budget deficit. The Department of Syphilology and Dermatology consistently maintained the highest or second-highest patient visit totals in the hospital, averaging 16 percent of the hospital's total patient visits in the 1930s. Dudley Crofford Smith to Dr. J. C. Flippin, January 19, 1937; and Dudley Crofford Smith to John Loyd Newcomb, April 5, 1937, "Medicine, Dept. of—General (1937–1938)" folder, Box 12, President's Papers, .491, subseries III.

white patient. White patients, fully appraised of the nature of their illness and economically enfranchised, received longer, more complete therapy.

The Albemarle County study began a close collaboration between the USPHS, the university of Virginia alumni in its ranks, and the University of Virginia's Department of Syphilology and Dermatology. Although the Rosenwald Fund money dried up in 1931, the program of syphilis containment continued. On March 3, 1932, Dr. Maxcy could report that "some forty-five percent of the negro population in the County have been examined and those found infected placed under treatment. The results of this study will be of fundamental importance in attacking this very important disease problem in other counties in the state."¹²¹ In recognition of his efforts, Dudley Crofford Smith earned appointment as one of thirteen "special consultants" to the USPHS Division of Venereal Diseases in 1933, in the company of his friend Henry H. Hazen.¹²² Between 1933 and 1939, Smith received a number of small grants from the USPHS to cooperate in syphilis serology studies.¹²³ Smith's efforts earned him a congratulatory letter—sent by his former student Raymond A. Vonderlehr to University President John Lloyd Newcomb—averring that Smith "rendered most valuable assistance in bringing this study to a successful conclusion and the organizations concerned are deeply indebted to him."¹²⁴

¹²¹Kenneth F. Maxcy to George B. Zehmer, 3 March 1932.

¹²²See Treasury Department, *Official List of Commissioned and Other Officers of the United States Public Health Service* (Washington, D.C.: Government Printing Office, 1935), 41 [photocopy in author's possession]. Smith maintained this affiliation until his death in 1950.

¹²³The first grant mentioned in hospital records was for \$600. Hospital Executive Director's Office, "Minutes of the Executive Committee," 21 June 1935, 2. Wilhelm Moll Rare Book and Medical History Room, Claude Moore Health Sciences Library, University of Virginia, Charlottesville. [Hereinafter HEDO, Title, date, page number.]

¹²⁴Raymond A. Vonderlehr to John Lloyd Newcomb, 15 July 1935, President's Papers: .491: II: 17: "Medicine, Department of, General" (1934-1936). The report accompanying this letter, "The Evaluation of Serodiagnostic Tests for Syphilis in the United States: Report of Results," prepared by the USPHS listed Hugh Cumming, Henry H. Hazen, and Vonderlehr among its authors. Read at a round-table conference of the American Society of Clinical Pathologists in Atlantic City New Jersey (7 June 1935), the study purported to "determine the reliability of the several serodiagnostic methods used in the United States." Smith and others recovered 14,238 samples of blood and 2,860 samples of spinal fluid from various donors and shipped them off to 13 different testing centers. Samples taken in Charlottesville came from the University Hospital and the Blue Ridge Sanatorium for Tuberculars. Nowhere in the report is consent or treatment mentioned; either to obtain the samples or to follow up on those who tested positive -- except as necessary to take a second batch of samples to corroborate the first test if it was in question. While no

Administrative changes in Albemarle County would help Doctor Smith to continue investigating syphilis among African Americans. In May of 1936, the city of Charlottesville, Albemarle County, and the university created the Joint Health Department to share the burden for public health expenses. Eugenic rhetoric reverberated through the Joint Health Department's specific mandate. The department was charged with giving "preference to indigent patients from both City and County who might be certified by the Health Officer as menaces to the public health."¹²⁵ The Joint Health Department also aided in the clinical instruction of nurses and medical students. This new bureaucracy became closely aligned with both the Department of Syphilology and Dermatology and the USPHS. By 1938, the Department of Syphilology and Dermatology was engaged in four major research projects, two of which involved the Joint Health Department and the USPHS directly: a continuation of the arrangement by which the University supplied blood specimens for USPHS serologic investigations, and an "intensive serological and epidemiological survey of this (Charlottesville and Albemarle County) rural community to determine the incidence and injury produced by syphilis."¹²⁶ After making the survey, the Joint Health Department planned to administer "wide spread application of modern syphilotherapy." Smith and the USPHS projected this "new" survey, slated for a five-year duration and an annual budget of \$27,250, as a comprehensive program of detection and

mention of race is made, that the Blue Ridge Sanatorium was a white-only institution, and the use of the word "patient" to describe the syphilitics implies that they were white or mostly white.

¹²⁵George McLean Lawson, "A Survey of the Joint Health Department with Reference to the Distribution of Service Rendered to the City of Charlottesville and the County of Albemarle: January 1, 1938 - December 31, 1939" (unpublished Ms., Charlottesville: Department of Preventive Medicine and Bacteriology, 1940), 1. This report resides in, President's Papers: .491: IV: 11: "Medicine, Department of -- General (2)," (1939-1940).

¹²⁶Dudley C. Smith, "Current Investigations -- Department of Dermatology and Syphilology" President's Papers: .491: III: 12: "Medicine, School of, Information for Miss Hope American Foundation" (1938). The other three studies included: a study of the treatment of neurosyphilis with drug Mapharsen, funded by Parke, Davis pharmaceuticals; a study of the "Epidemiology of syphilis - with special reference to period of infectiousness"; and, a "Review of twenty years' experience, as shown by Out Patient Department and Hospital records, with all stages of syphilis."

treatment. In reality, it was nothing more than another effort to contain syphilis within the African American population, and to attract money and prestige to the university.

This "epidemiological study" almost failed to get beyond the planning stages. The program existed on the edge of financial insolvency. Dudley Smith and the new professor of preventive medicine and bacteriology, Dr. George McLean Lawson, lobbied the university to increase funding for the Department of Syphilology and Dermatology and its programs.¹²⁷ When frustrated officials of the Joint Health Department moved for dissolution in 1939, Smith and Lawson enlisted the direct support of the Virginia alumni in the USPHS. In a particularly candid letter, Lawson wrote to President Newcomb that he had contacted Surgeon General Thomas Parran and Assistant Surgeon General Raymond A. Vonderlehr. Lawson took these measures because, he wrote, "I am not sure you understand fully the nature of this project," which the USPHS had agreed to fund for five years. "In financing this project the sum of \$21,000 is to be expended annually. . . .It will be obvious, that for an expenditure of less than five hundred dollars per year by each party [the members of the Joint Health Department], the benefits obtained from this \$21,000.00 annual expenditure are out of all proportion to the local subsidy."¹²⁸ Desiring to see such a large fund administered, at least in part, by the university, Newcomb responded, "This matter is important and we cannot permit a dissolution of the Joint Health Department if it is at all possible to prevent it, and I think we can." Establishing a yearly audit, to be

¹²⁷The University Hospital constantly experienced difficulties obtaining adequate funding from the state, and as a result, suffered from a chronic shortage of space within its facilities. Interdepartmental squabbling over space in the hospital appears throughout the records of the Hospital Executive Directors Office (see note 135, above), as well as in Smith's yearly reports to the dean of the school of medicine and the university president. See, for example, Smith to James C. Flippin, 16 January 1934, President's Papers: .491: II: 17: "Medicine -- Department of, General" (1934-1936) and, Smith to Flippin, 19 January 1937, President's Papers: .491: III: 12: "Medicine -- Department of, General" (1937-1938). Also see, Cawley, *History of the Department of Dermatology*, 8-9, 15; and, Raymond A. Vonderlehr, "Summary of the Activities of School of Dermatology and Syphilology," President's Papers: .491: IV: 11: "Medicine -- Department of, General (2)" (1939-1940).

¹²⁸Lawson to Newcomb, 6 April 1939, President's Papers: .491: IV: 10: "Medicine -- Department of, General (1)" (1939-1940). Copies of the responses of Parran and Vonderlehr, strongly advocating the continuation of the Joint Health Department, reside in this file also.

conducted by officials of the university, Newcomb managed to placate city and county officials and save the Joint Health Department, but tensions remained.¹²⁹

In 1939, the same year official notice of the Tuskegee study's existence regained mention in the USPHS yearly rosters, Dudley Smith and the USPHS officially "reactivated" the Albemarle County control study under the title: "Control of Syphilis with Special Emphasis on Epidemiology."¹³⁰ This program sought, like its predecessor, to identify syphilitic African Americans. The project did not attempt to fulfill the Joint Health Department's mission—to "determine the incidence and injury produced by syphilis" within the total population of Albemarle County—and engage in the "wide spread application of modern syphilotherapy."

Rather than testing all people regardless of race—the so-called Wasserman dragnet approach—this new program tried to streamline the process by limiting the study to blacks. Doctors in Charlottesville assumed, based on statistics from other studies, that whites had a lower infection rate and a much higher cure rate than blacks. Syphilis, they believed, was controlled in the white population through curative treatment. The "syphilis problem" was, therefore, really part of the "Negro problem." Rather than seeing this discrepancy between blacks and whites as a function of economics and education, physicians relied on the time-honored stereotypes of blacks as lustful, lazy, and non-compliant patients.¹³¹

¹²⁹Newcomb to Lawson, 7 April 1939, *Ibid.* The Albemarle County Medical Society passed a resolution that "unanimously deplored" the proposed termination of the agreement. The medical society rested their resolution on the grounds that a termination of the agreement would jeopardize efforts at syphilis control. Albemarle County Medical Society, "Resolution of the Albemarle County Medical Society," President's Papers: .491: IV: 11: Medicine, Department of -- Suggestions for Successor to Dr. Flippin" (1939-1940). See also, George McLean Lawson to Mr. Haden, Director of Finance, 22 January 1940, President's Papers: .491: IV: 11: "Medicine, Department of -- General (2)," (1939-1940).

¹³⁰Treasury Department, *Official List of Commissioned and Other Officers of the United States Public Health Service* (Washington: Government Printing Office, 1939), 55. The Surgeon General's *Annual Report* continued to mention Tuskegee, while it had been dropped from the list of on-going investigations in the rosters during the middle-thirties.

¹³¹Vonderlehr and Clark, in reporting on Tuskegee, confessed that most patients became "dilatatory in returning to the attending physician." Nevertheless, the customary stereotypes remained powerful. Vonderlehr, et. al., "Untreated Syphilis in the Negro Male," 264.

In order to identify syphilitics, the new Charlottesville study relied upon the methods established during the earlier studies and refined in Tuskegee: misrepresentation, dissimulation, and insufficient treatment. Smith had posters and handbills made to advertise the new program. "WIN—A BRAND NEW SUIT OR DRESS = **FREE**," proclaimed the poster for storefronts, noting that the contest was for "Negroes -- 15 to 40 years old." All participants had to do was, "GET A GOVERNMENT FREE BLOOD TEST FOR BAD BLOOD -- syphilis --"¹³² to get a lottery ticket. "Have a government blood test (Free -- Confidential) for bad blood (Syphilis)," proclaimed a handbill passed out to Albemarle County's African Americans, and "Get Your Lucky Ticket at the Health Department."¹³³ A final exhortation on the storefront placard commanded, "BE HEALTHY." The posters and handbills displayed an interesting ambiguity, vacillating between disclosure and misdirection. The signs mentioned syphilis by name, yet they used the term "bad blood," and reduced the size of the type for syphilis and encapsulated it within parenthesis, as if trying to hide it. In the list of ten steps explaining the "Prize Rules," the handbills emphasized that "Only one try to each person" and "Anyone who has had shots or is taking them now (arm and hip shots) is not allowed to try for this prize." The limitation on prize attempts invoked a curious mix of paternalism and scorn. The signs implied that blacks are greedy, conniving, and easily excited by the chance to win a suit or dress, so they need to be reminded—like children—to play fairly. Confidentiality is mentioned twice and defined for those who did not understand the word, "nobody knows

¹³²University of Virginia, "Charlottesville and Albemarle County Campaign Posters for Negro Anti-Syphilis Program," (Charlottesville: Virginia Printing Office, 1939-1940) 851: Oversize Box J. Special Collections, Alderman Library, University of Virginia, Charlottesville. Two of these larger, black-and-white, heavy card-stock posters reside in the collection. The size of the printing is suggestive of an attempt to draw attention away from the word syphilis and toward the potential prize.

¹³³University of Virginia, "Charlottesville and Albemarle County Campaign Posters for Negro Anti-Syphilis Program," (Charlottesville: Virginia Printing Office, 1939-1940) 851: CF: handbills. Special Collections, Alderman Library, University of Virginia, Charlottesville. [Hereinafter, Charlottesville Syphilis Handbill.] Several examples of this document reside in the collection, they differ only in color: printed on bright red, yellow, blue, and green paper, Smith clearly designed these handbills/broadsides to attract attention and to be posted as well as distributed by hand.

but the doctor how your blood is." The word syphilis appears three times, once more than "bad blood," but it is never defined. Treatment is not mentioned, other than the oblique reference to anyone taking "shots," although one of the "Prize Rules" stipulated that participants must, "Read a health pamphlet on bad blood -- Syphilis (Free)." These last three measures seem designed to entice those not attracted by the chance at free clothing, and perhaps reluctant because they knew more about the nature of the test and disease. Indeed, the final line on the handbill, "Tests also will be made around town in a few dance halls and cafes if you want them made there," suggests both that Smith believed two things. First, people might be reluctant to go to the three testing sites for fear of being identified as sick; and second, that in order to get infected people, he might have to take the tests to them in locations of dubious morality—dance halls and cafes rather than schools and churches. Yet if the black community was as infected as doctors seemed to believe it was, one wonders about these concessions.

Smith and his compatriots loaded the notices with implicit, but unmistakable, messages about race. The posters assume ignorance, immorality, and the endemic nature of the disease in blacks. This final presumption is particularly curious given the overarching context in which these tests were to occur. Albemarle County had previously recorded the lowest incidence of syphilis among blacks in the 1930 Rosenwald Survey. Yet Smith and his investigators limited the 1940 study, despite billing it as having an emphasis on epidemiology, to the black community. This implied that syphilis had epidemic standing only among blacks, and that the tracing of sexual contacts could, should, and need only occur among the black population. Such measures, and the embarrassment and indignities attendant to them, were not necessary in the white population, according to Smith's logic. These preconceptions about the black population expose assumptions about whites. It is clear that Smith and the investigators understood syphilis in whites as largely treated and/or treatable—so they excluded them from the epidemiological study. This implied that

syphilitic whites complied with treatment until cured, preserving a non-epidemic, disease free, "pure" white population. Smith and his colleagues portrayed the African American population as diseased and incurable while the white population became the model of health and compliance. The public health and eugenic implications of this situation are obvious: blacks are unfit, unhealthy, and need of quarantine, segregation, and control. Superior whites were free to go.

In the end, the revived program lasted only three years. From its planning stages in 1939, through two active years of service in 1940 and 1941, financial woes plagued the new study. During the course of the project, Smith and the USPHS concentrated their influence on persuading officials of the state, locality, and university to step up their contributions to the cause. "The people of this country, including the State of Virginia, are determined that syphilis will be wiped out," Assistant Surgeon General Vonderlehr wrote to President Newcomb. "It is my hope, as an alumnus of the University of Virginia," Vonderlehr continued, "that the facilities in the School of Dermatology and Syphilology will be expanded to permit the Department of Medicine to take its proper place among other medical schools in the training of physicians in this important field of medicine and of public health."¹³⁴ Frustrated by continuing budget woes, in April of 1940 Dudley Smith threatened to leave his professorship, abandoning the department he founded.¹³⁵ Newcomb, fearing the loss of Smith but unable to find any additional money in the budget, took Smith's suggestion and decided to "see if we cannot get some money for you from outside sources."¹³⁶ Only days later, letters arrived on Newcomb's desk from Surgeon General Thomas Parran and Assistant Surgeon General Raymond Vonderlehr testifying to

¹³⁴Vonderlehr to Newcomb, 16 March 1940, President's Papers: .491: IV: 11: "Medicine -- Department of, General (2)" (1939-1940). See also Smith to Harvey Ernest Jordan, 16 January 1941, President's Papers: .531: I: 9: "Medicine -- Department of, Dean Jordan" (1941-1942).

¹³⁵Smith to Newcomb, 4 April 1940 and 5 April 1940, President's Papers: .531: I: 9: Medicine -- Department of, Dean Jordan" (1941-1942).

¹³⁶Newcomb to Smith, 8 April 1940, Ibid.

Smith's importance not only to Virginia, but to national public health work.¹³⁷ Newcomb, true to his word, and at the suggestion of Vonderlehr and Smith, applied to the Commonwealth Fund, the Rosenwald Fund, The Markle Foundation, and the Buhl Foundation for additional money; each foundation rejected his appeal.¹³⁸ None of the philanthropic organizations objected to the racial overtones of the study; most claimed that the study simply fell beyond their organizational purview. Financial pressures did not cause the study's final demise, however. The end came with a reduction in the Congressional appropriation to the USPHS and a subsequent retrenchment on the part of the USPHS.¹³⁹

One significant irony of the USPHS experience in Charlottesville and Tuskegee remains to be explored. Jones and other commentators have evaluated the significance of the experiment's timing. These commentators argue that these studies occurred during an era before well-defined notions of experimental ethics and informed consent existed within the medical community. Many historians date the advent of modern medical ethics to the adoption of the Nuremburg codes, devised in the wake of revelations about the Holocaust to prevent the experimental abuse of medical patients. Upon further investigation, however, one finds that well-articulated ideas of informed consent and medical ethics did exist prior to the advent of the Nuremburg codes.¹⁴⁰ Indeed, as significant as the connection between the USPHS and the University of Virginia was in terms of socializing

¹³⁷Parran to Newcomb, 12 April 1940, President's Papers: IV: 11: "Medicine -- Department of, General (2)" (1939-1940). Parran remarked, "For many years I have followed the splendid work which Doctor Dudley C. Smith has done, and I know that he is capable of directing one of the most efficient schools of dermatology and syphilology in the country."

¹³⁸The correspondence dealing with this struggle resides in President's Papers: .531: I: 9: Medicine -- Department of, Dean Jordan" (1941-1942). The correspondence runs from April of 1940 through June of 1941.

¹³⁹Smith wrote directly to Senator Carter Glass to persuade him not to implement the budget cuts. Smith to Carter Glass, President's Papers: .491: IV: 11: "Medicine -- Department of, General (2)" (1939-1940).

¹⁴⁰R. R. Fadden and T. L. A. Beauchamp, *A History of Informed Consent* (New York and Oxford: Oxford University Press, 1986).

physicians with an integrated ideology relating public health and eugenics, this connection is equally significant in terms of medical ethics, experimentation, and epidemiology.

The grandfather of informed consent in medical research, a man known world-wide for his human experimentation that solved the epidemiological riddle behind one of the greatest threats to public health, graduated from the University of Virginia School of Medicine. Walter Reed graduated in 1869, "attaining the distinction of being the youngest student who ever graduated from the Medical School then famous. . .for its didactic excellence. . .and enveloped then, as now, in an atmosphere of great traditions and lofty spirit."¹⁴¹ In 1900, Reed proved that mosquitoes transmitted yellow fever, relying on the results of experiments performed on men who volunteered—after being informed of the danger—to be bitten by infected mosquitoes. Reed became a role model to all who came after him, including Paul Barringer and the Virginia eugenicists. At the same time that these men extolled Walter Reed as a paragon of "scientific integrity, intellectual courage, and devotion to truth," they taught doctrines and performed experiments that contradicted the spirit and the reality of Reed's example.¹⁴²

Paul Barringer, like most Virginia alumni, discussed Reed and his achievements with reverence.¹⁴³ Given his familiarity with Reed's work, it is not surprising that when Paul Barringer gave a speech on "Medical Ethics" before the Tri-State Medical Society of Georgia, Alabama, and Florida, he focused on the relationship between physician and patient. Barringer wrote that the very notion "medical ethics" must be "divided into the relations: first, of Practitioner and Patient; second, Practitioner and Public, and third, Practitioner and Practitioner. . . .the first of these is fundamental." After giving a lengthy history of the origins of medicine, in which he referred to the "philosophic medical priest with his attendants and apprentices, with clinical material abundant, and just at hand,"

¹⁴¹Harvey Ernest Jordan, "untitled speech dedicating the Walter Reed memorial," President's Papers: 472: VII: 21: "Medicine -- School of, Walter Reed's Memorial" (1926-1928), 2.

¹⁴²Jordan, *Ibid.*, 1.

¹⁴³Barringer, Barringer Memoir, 318-20.

Barringer announced that, "From the end of the Dark Ages down to fifty years ago the family physician, as he was called, reigned supreme."¹⁴⁴ Despite the reference to patients as "material," Barringer centered his speech on the sanctity of the Hippocratic Oath: its injunction to "abstain from whatever is detcrious [sic] and mischievous" to the patient, and its prohibition of "every voluntary act of mischief and corruption."¹⁴⁵

Barringer's belief in the power of the Hippocratic Oath, administered to most physicians but bearing only the power of ritual and moral suasion, knew few bounds. "Five hundred years older than the Sermon on the Mount," he wrote, "it will stand the test tenet by tenet with that most marvelous of all utterances." Barringer proclaimed that, because of the power of the Hippocratic oath, "no new phase of professional error can arise which the code of ethics does not cover, because it is based simply upon fundamental principle." The fundamental principle enshrined in the oath is the sanctity of the individual human being and its right to be cared for, not neglected or harmed, by physicians. Notwithstanding Barringer's belief in the oath, because of its largely symbolic nature, it was easily traduced by those who devised the Tuskegee experiment. Those individuals placed their interests in science and white supremacy well before their allegiance to the "fundamental" canons of medical practice.¹⁴⁶

* * * *

The notion that a "moral astigmatism" afflicting the USPHS was responsible for the human tragedy of the USPHS Study of Untreated Syphilis in the Negro Male is somewhat misleading. Such a claim disembodies responsibility from individual actors and locates it entirely within the institutional structure of the USPHS. A more revealing portrait of the

¹⁴⁴Barringer, "Medical Ethics," in "Medical Topics (undated)" folder, Box 6, Barringer Papers, 1, 7. The speech is undated, but from internal references to dates, it appears to have been written and delivered during the decade spanning the middle-1910s to the middle-1920s.

¹⁴⁵Barringer, *Ibid.*, 12-13.

¹⁴⁶Barringer, *Ibid.*, 11. Ironically, Harry Hamilton Laughlin wrote a version of the oath for eugenicists, in which he concentrated not on the ethics of treatment, but the oath's injunction to secrecy. "The Hippocrates Oath for Eugenists: Obligation to Professional Secrecy," *Eugenical News* 16 (March 1931): 40-41.

USPHS's institutional ethics comes from analyzing the bureaucracy from the perspective of what its personnel believed, seeking to understand the individuals who comprised the institution. Examining individual background and training clarifies how Surgeon General Hugh Smith Cumming could say of public health—the year before he approved the Tuskegee study— that, "There is perhaps in this field of professional endeavor as nowhere else necessity for calm judgment, ability to recognize a balance of values, and intellectual honesty which after all is the most important attribute of a true scientist." Without any trace of sarcasm or irony, Cumming continued, "I venture to say that [the American Public Health Association] itself should be particularly careful to observe that injunction of the Apostle, 'Avoid the appearance of evil.'"¹⁴⁷ Cumming, more concerned about appearances than substance, found it quite easy to approve a study that, on its face, translated all the professional and ethical precepts outlined in his address.

That Hugh S. Cumming, Taliaferro Clark, and Raymond A. Vonderlehr shared similar cultural, intellectual, and institutional backgrounds is beyond dispute. Equally undeniable is the vanguard role they played in originating, organizing, and overseeing the Tuskegee Study of Untreated Syphilis in the Negro Male. Understanding the motives that led these men to create an experiment that abused the very individuals it claimed to help is a more complex task; one that is partially fulfilled by examining the ideas used to train these men. Ultimately, the experiment's ideological underpinnings originated, at least in part, in the education these men received at the University of Virginia School of Medicine. The historical and institutional context conditioning these and many other public health officers' education materially shaped their approach to disease, public health, and people of color.

Ultimately, Virginia's medical training amplified the consonance between eugenics and public health doctrines. Eugenics and public health advocates like James Lawrence Cabell, Paul Barringer, Harvey Jordan, Robert Bean, Ivey Lewis, Theodore Royster, and Dudley

¹⁴⁷Cumming, "Presidential Address," 1193.

Smith all emphasized prevention as better, because antecedent to and hence more efficient, than treatment. This logic applied equally to eugenical arguments about unfit individuals and public health approaches to certain diseases. Prevention relied on essentially the same measures, under different names, for both eugenicists and public health officers: segregation/quarantine, sterilization/fumigation, and euthanasia/eradication. Both the unfit and disease posed material threats to social well-being, hazards better avoided through prevention than solved through treatment. If that prevention could be achieved from birth through appropriate mating, so much the better.¹⁴⁸

The similarities between the languages of eugenics and public health reinforced the apparent interchangeability of their approaches to social problems. Meeting within the racism, nativism, and syphilophobia extant in America, ideas about "segregation" and "containment" fused, becoming accepted as the most reasonable, efficient, and effective approaches to African-American public health problems, the most significant of which was syphilis. The various USPHS programs to contain syphilis within rural black populations reinforced the separation of black social concerns from white social concerns, buttressing the culture of racial division. Containment, like quarantine and segregation, blamed the victims—holding African Americans' at fault for becoming infected and defining the black body as, *de facto*, diseased and, like a germ, deserving of eradication. In public health terms, containment successfully quarantined a population until the disease had run its course. In eugenic terms, containment provided negative pressure on a doubly-dysgenic class—twice inferior because both black and diseased. This approach promised at least to limit the dysgenic effect of blacks on white society and, at most, the eventual extirpation of the black population through the ravages of disease. Containment thus embodied salient public health and eugenic goals in the white USPHS approach to "Negro Health."

¹⁴⁸The prevention/treatment dichotomy that characterized public health thinking mapped precisely to the nature/nurture or heredity/environment dichotomy that shaped eugenic thinking. Both frameworks privileged the primary term as more determinative and efficient than the latter term.

Moreover, containment of syphilis rehearsed Progressive Era notions of economic and biological efficiency that resonated with eugenicists and public health officials. Containment, because it concentrated on rendering poor blacks non-infectious, reserved scarce therapeutic resources for that segment of the population white public health service officers believed most likely to utilize them to greatest effect. Thus, containment preserved those considered most eugenically fit: individuals genetically intelligent enough to be compliant patients and socially valued enough to deserve complete therapy. In 1930s America, whites embodied these categories, to the virtual exclusion of blacks. The economic inability of most blacks and lower-class whites to gain access to syphilo-therapy on a fee-for-service basis highlighted their lack of eugenical fitness in the eyes of whites. African Americans and the white lower class were, by definition, genetically deficient and their social station only proved this biological axiom for eugenicists.

Under these conditions, USPHS administration of the minimum therapy possible served multiple purposes. Minimizing therapy allowed the USPHS to operate with the strict economy demanded by a parsimonious Congress during the Great Depression. Restricting treatment also allowed them to establish the basis for the Tuskegee study. Finally, rationalizing reduced treatment helped to remove "sentimentality" and "charity" from the ideological justification for public health provision. Instead, USPHS officers could feel that they were doing the greatest good for the greatest number of people, despite leaving some people untreated. Indeed, it allowed them to rationalize non-treatment on the specious grounds that aspirin, iron-tonic, and regular physical examinations constituted quality medical care far beyond that which the Tuskegee men could have expected otherwise.¹⁴⁹ The deprivation of individuals infected with syphilis—treating them only until rendered non-infectious—became rationalized as necessary for the good of society,

¹⁴⁹Jones, *Bad Blood*, 164.

which would gain by a better understanding of the presumed biological differences between blacks and whites. Individual suffering took a back seat to societal welfare.

The good of society, as approached through scientific research, allowed physicians, white and black, to accept the sacrifice of black lives in the name of "science." Public health physicians, like scientists in other areas, became liable to the dangerous syllogism created between science, objectivity, and morality. Science, because pursued "objectively," imputed a de facto morality to their studies.¹⁵⁰ Coupling these assumptions to the lack of explicitly developed guidelines in medical ethics has provided a compelling explanation for the origins of the study.

Yet this is too facile an acceptance of the status quo, too quick and potentially patronizing a view that somehow, morally benighted physicians in the 1930s never thought to ask tough moral questions about the study and its goals. Evidence answering the question "what did these men know about medical ethics, and when should they have known it" reveals that of all physicians, those educated at the University of Virginia should have had better developed notions of "informed consent" and "experimental ethics" than that which they exhibited. Coming out of the tradition of Walter Reed, and educated by Paul Barringer—an early proponent of (white) medical ethics—these men had good reason to pause before instituting the Tuskegee study. The existence of more compelling, competing ideological reasons—ideas learned in the course of their formative pre-professional years—could, however, have prompted them to continue their dubious course. Reared in a culture where many forms of racism were rendered transparent by the egregious examples of lynching and de jure segregation, these men also shared in the intellectual system supporting racial subjugation. Socialized to believe in the goals of eugenics and public health, committed to the primacy of public health over individual

¹⁵⁰A fuller development of this idea, and its rather stunning implications, can be found in Gertrude Fraser's contribution to, *Doing Bad in the Name of Good? The Tuskegee Syphilis Study and its Legacy*, produced by University of Virginia, 4 parts, 206 min., Division of Continuing Education, Education and Distance Learning Technologies, 1994, videocassette.

rights, and interested in substantiating biological differences that would support personal and professional racial biases, Hugh Cumming, Taliaferro Clark, and Raymond Vonderlehr found more than ample reason to ignore their mentor's lessons about ethics. After all, what was black health to them—other than an obstacle to the attainment of white racial health? Given the fact that the USPHS was all white until 1932 (not coincidentally the year the Tuskegee study began) and then admitted only one black physician as a non-commissioned "Negro Specialist," also says much about its institutional culture regarding race.¹⁵¹

It is no small irony, then, to consider a final laudatory estimation of Hugh Cumming's tenure as surgeon general: "You have builded so wisely and so well that, in your retirement, the world loses only your active work. The great constructive things you have created and set in motion will continue to function smoothly for many, many years to come."¹⁵² Quite the same could be said of the destructive thing created and set in motion under the supervision of Hugh Cumming, Taliaferro Clark, and Raymond Vonderlehr, the human tragedy of the Study of Untreated Syphilis in the Negro Male.

¹⁵¹Dr. Roscoe C. Brown achieved this position as a result of his connection to the Roosevelt administration. He served for over thirty years, yet he retired without ever being formally commissioned into the USPHS officer corps. Smith, *Sick and Tired*, 60–82.

¹⁵²William Guy Morgan to HSC, 27 January 1936, Cumming Papers: 4: "Miscellaneous Correspondence" (1901-1936).

Chapter IX: "They Saw Black All Over"

On May 17, 1954, the United States Supreme Court forever changed the rules that had governed southern society. Chief Justice Earl Warren, writing for a unanimous court, declared that the compulsory segregation of black and white school-children "generates a feeling of inferiority as to their status in the community that affects their hearts and minds in a way unlikely to ever be undone." The court concluded "that in the field of public education the doctrine of 'separate but equal' has no place."¹ School segregation deprived African-American students of the equal protection of the laws guaranteed by the Fourteenth Amendment. Henceforth black children and white children would, in theory, sit side-by-side in America's public schools.

This ruling created the "breach in the dike" of segregation that Virginia eugenicists had feared for so long. The culmination of the National Association for the Advancement of Colored People's legal campaign against segregation, *Brown* opened the floodgates for the dismantling of the "separate but equal" legal doctrine undergirding all manifestations of legalized segregation.² The *Brown* decision has long been cited as a watershed in Supreme Court jurisprudence, because of the opinion's two distinctive features. First, the Court overrode one of its own most famous precedents, *Plessy v. Ferguson*. Second, it did so largely on the basis of "sociological jurisprudence" rather than legal precedent. The Court accepted testimony presented by sociologists and psychologists that "separate but equal" treatment "damaged" the psyches of young African Americans. This conclusion directly contradicted the logic of the Court in *Plessy*, and it affirmed the ascendance of

¹*Brown v. Board of Education of Topeka Kansas, et. al.* 347 U.S. 483 (1954).

²"Separate but equal" was the legal standard established by the Supreme Court's ruling in *Plessy v. Ferguson*, 163 U.S. 537 (1896), at 550-51. Probably the best single-volume treatment of this campaign remains Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 1975). An excellent compilation of critical documents surrounding the case is Mark Whitman, ed., *Removing a Badge of Slavery: The Record of Brown v. Board of Education* (Princeton, NJ and New York: Markus Wiener Publishing, Inc., 1993).

environmental concerns over hereditarian notions in the scientific, legal, and ultimately public realms.³

Previously, in the debates over the federal Immigration Restriction Act and Virginia's sterilization and racial integrity laws, legislators accepted hereditarian arguments as providing the necessary rationale for the exercise of the state's police power. Courts, too, with the exception of Judge Holt, found that laws based on the scientific data of the hard hereditarians passed the "rational relationship test." This jurisprudential device held that legislation must have a reasonable relationship to a goal within the state's ability to achieve; a reasonable person, looking at the facts, should come to the same conclusion. By this logic, eugenic laws presented a reasonable argument about the "menace" of immigrants, the feeble-minded, and miscegenation and proposed solutions easily within the power of the state to effect, namely restriction, sterilization, and annulment.

Beginning with *Brown*, environmentalist logic assumed preeminence in legal discourse about individual liberties and the state's police power. The apparent success, in the popular mind if not in reality, of New Deal social reforms seemed to vindicate environmentalist sociology and anthropology. The backlash against hereditarianism unleashed by the discovery of the Holocaust sped the retreat from hard heredity. The hereditarian viewpoint still survived in science and society, but it came increasingly under attack, reduced from its former predominance to a co-equal status with environment in shaping human destiny. Nevertheless, in the proper social and political contexts, hard hereditarianism and eugenics

³The famous footnote in the *Brown* decision, citing seven sociological and psychological studies, Warren felt "amply supported" the Court's findings. This was not entirely without precedent. The famous "Brandeis brief" in *Muller v. Oregon* 208 U.S. 421 (1908) used sociological evidence to successfully argue for limitations on hours worked by women. Nevertheless, the justices accepted the argument in part on the hereditarian ground that women, as "mothers of the race" needed to have their health protected. See Morton J. Horwitz, *The Transformation of American Law, 1870-1960* (New York and Oxford: Oxford University Press, 1992), 188-89. Justice Brown in *Plessy* ruled that, "We consider the underlying fallacy in the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." *Plessy v. Ferguson*, 163 U.S. 537 (1896).

could resurface and exert much of their old power. The American South in the wake of *Brown* presented just such an environment in which hereditarianism found nourishment in a hospitable culture.

This chapter introduces the dying gasps of mainline eugenics within Virginia's public policy arena in the post-*Brown* period. The *Brown* decision prompted a brief resurgence in organized, old-style racist eugenics, which was mobilized as a scientific justification for Massive Resistance to desegregation. The Racial Integrity Act received its final reprieve from the United States Supreme Court in 1955–1956, in the case *Naim v. Naim*. Virginia's staunch adherence to the reasonableness of racial integrity bucked both scientific and broader cultural norms. While mainline eugenics would be deployed by hard-line Virginia segregationists a few more times, most notably in the *Loving* case, its hour was past and the day was lost. The Supreme Court's 1967 decision in *Loving v. Virginia*, overturning the Racial Integrity Act, brought Virginia's history of racial control through eugenical social policy to a close.

The other wing of mainline eugenic policy, the sterilization of the "feebleminded," survived in Virginia. Virginia's sterilization rates would not drop until the 1960s. In 1962 and 1964, state legislators waged an abortive battle for the punitive sterilization of "Welfare Mothers," an effort that once again bonded race and class in the name of the eugenic improvement of the state. Virginia performed its last legal eugenic sterilization in 1972.⁴ In the next two years, federal courts handed down decisions in *Roe v. Wade* and *Relf v. Weinberger* that established new limits on state authority in relation to reproduction, and buttressed individual autonomy and the right to privacy.⁵ These decisions, and the

⁴This is the commonly accepted date. At least one investigator claims that the final procedure performed under the statute occurred in 1979.

⁵*Relf v. Weinberger* ended sterilization abuses directed at poor women. That such abuses occurred first became well-known in 1973, "when it was learned that two Alabama children, Mary Alice and Minnie Relf [who also happened to be black] as well as two South Carolina women -- all receiving federal assistance -- were coerced into consenting to sterilizations." The resulting law suit, *Relf v. Weinberger*, 372 F. Supp. 1196 (1974), forced the federal Department of Health Education and Welfare to devise policies "to protect persons legally capable of consenting from being intimidated or coerced into sterilizations." A subsidiary of

changed cultural atmosphere regarding sexuality and reproduction, spurred along by the counterculture and feminist revolts, all presaged the death-knell of statutory eugenic public policy.

The series of landmark legal and social events rocked Virginia's social and political culture. Virginians again faced the "crisis of modernity": Would they adhere to the now-outmoded eugenic justifications of an earlier generation; or, would the state respond to the changing national and professional attitudes concerning human nature that ultimately undercut mainline eugenical theory? Virginians in the wake of *Brown* faced a very similar sense of instability and change as that which they confronted during the New South era. It remained to be seen how Virginia's political, educational, legal, and social institutions would respond as they confronted a new watershed between modernism and traditionalism.

The eugenics taught in the University of Virginia, and by other colleges and universities in Virginia and America, increasingly took the more benign form of population control. In response to the booming populations worldwide (particularly in the third world) facilitated by the "green revolution" of the 1950s and 1960s, eugenics underwent another series of shifts that seemed to bring the science full circle to Thomas Robert Malthus.⁶ Population control, rather than completely expunging racist mainline eugenic thinking, buried it under neo-Malthusian concerns about world over-population, the quality of the world population, and the supply of food.⁷ This change in Virginia's curriculum mirrored the

Ralph Nader's watch-dog group Public Citizen, the Health Research Group, spearheaded the assault on this form of abuse, which continues today. See, Health Research Group, "Health Research Group Study on Surgical Sterilization: Present Abuses and Proposed Regulations (October 29, 1973)"; and Health Research Group, "Sterilization Without Consent: Teaching Hospital Violations of HEW Regulations (January 21, 1975)," quotations, 4. Chase, *Legacy of Malthus*, 16-17; and, Reilly, *Surgical Solution*, 150-152. *Roe v. Wade*, 410 U.S. 113 (1973) established the constitutionality of abortion and women's access to abortion services under the constitutional "right to privacy." David J. Garrow, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade* (New York: MacMillan Publishing Company, 1994).

⁶Geographers and agronomists refer to the development of disease and weather resistant strains of rice, wheat, and corn, along with corresponding developments in fertilizers and pesticides as the "green revolution" because of the radically increased crop yields made possible by these new technologies.

⁷This long trajectory, from Malthus to hereditarianism, to eugenics, to population control forms the central focus of Alan Chase, *The Legacy of Malthus: The Social Costs of the New Scientific Racism* (New York: Alfred A. Knopf, 1977), especially Chapters 16-22.

shift in the country at large, and when the final hard-line hereditarians joined the University of Virginia's faculty in the sixties and seventies, they were looked on more as anachronistic curiosities than as path-breaking scientists. Close as these hereditarians were, ideologically, to their eugenical forebears, Virginia's governmental, medical, and educational institutions had little tolerance and less room for their ideas and programs.

* * * *

Passing of the Great Race Baiters: Death of the Eugenics Old Guard

The end of mainline eugenics depended upon the retirement and death of its principal proponents as much as it did upon any changes internal or external to science. Given the pronounced inability of mainline eugenics to attract younger scientists to its fold, as the older men passed from the scene, they took with them the possibility for continued proselytization. The teachings of the older generation lingered on in the lives of their students, but the second and subsequent generation of students had a greatly attenuated exposure to these hereditarian ideals. While they may have learned extreme hereditarian or eugenic ideas at home or from high-school teachers, by the time they got to college in the mid-1950s, they were relatively unlikely to encounter more mainline sentiment.

Discounting the passing of Galton himself in 1911, death began winnowing the eugenical ranks during the 1930s and 1940s. This corresponds with Frederick Osborne's ascendance in the American Eugenics Society (AES) and the turn toward reform eugenics among the elite geneticists. In 1934 Charles Benedict Davenport retired, finally relinquishing all ties to the Eugenics Record Office (ERO) and the Carnegie Station for Experimental Evolution (SEE) in 1936. Following the Carnegie Foundation's scathing scientific audit in 1936, Laughlin retired in 1940 and died in early 1943. Davenport lived a year longer, dying of pneumonia caught while boiling a whale's skull for the Long Island Whaling Museum. Madison Grant, the greatest of all the eugenic race baiters, predeceased Laughlin and Davenport in 1937. Lothrop Stoddard survived World War II, witnessed the

defeat of Germany and confronted the revelations of the Nazi Holocaust. Stoddard died in 1950, however, without witnessing the major advances made by the civil rights movement.⁸ The "rising tide of color" had indeed triumphed over white world supremacy, at least in America, winning a victory for human rights and civil equality.

In Virginia, Edwin Anderson Alderman, the great progressive educator, died in 1931. Alderman's replacement, John Loyd Newcomb, faced with the effects of the Great Depression, focused his efforts on institutional survival rather than progressive reform. Like his close friend John Powell, Newcomb remained dedicated to the cause of racial segregation, but not dedicated enough to accept Wickliffe Draper's money and found a department of eugenics. Newcomb died in February of 1954, just months before the *Brown* decision. Paul Brandon Barringer finally died, after spending 24 years in "retirement" on the grounds of the University of Virginia, in 1941. In 1942, the year that Lawrence Thomas Royster died, Robert Bennett Bean took a leave of absence because of failing health. He expired two years later, a broken man in a private sanitarium, in 1944. Bean's son, now himself a physician rapidly gaining national prominence, eulogized his father in the pages of *Science*, but ignored the racist character of his father's studies and his support of eugenics.⁹ In 1946, Walter A. Plecker, then over 85 years old, retired as Virginia's state registrar of vital statistics; he died the following year.¹⁰ In 1949, Dean Harvey Ernest Jordan retired from the University of Virginia's medical school, closing a chapter in its eugenical heritage 42 years after he had been hired.

⁸Stoddard and Cox's correspondence had tapered off in the 1940s; Cox sent Stoddard a copy of his book *Teutonic Unity* in 1951, apparently unaware that Stoddard was dead. Earnest Sevier Cox to Lothrop Stoddard, March 21, 1951, Box 8, Earnest Sevier Cox Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham. [Hereinafter referred to as Cox Papers.].

⁹William Bennett Bean, "Robert Bennett Bean 1874-1944," *Science* 101 (April 6, 1945): 346-348. William Bean went on to be Dean of the University of Iowa Medical School, a nationally-renowned internist, and a self-styled medical historian. Bean earned recognition with a personal *festschrift*. See *Archives of Internal Medicine* 134 (November 1974).

¹⁰Paul A. Lombardo, "Miscegenation, Eugenics, and Racism: Historical Footnotes to *Loving v. Virginia* 21 *University of California, Davis Law Review* 21 (1988): 427 and note 19.

On the national level, Virginia's Assistant Surgeon General Taliaferro Clark and Surgeon General Hugh Smith Cumming retired from active duty in the United States Public Health Service (USPHS) in 1932 and 1936 respectively. While their legacy would live on another 40 years in the Study of Untreated Syphilis in the Negro Male, their retirement and the massive expansion of the USPHS for World War II effectively destroyed the Virginia cabal within the commissioned officer's corps. Clark and Cumming both died in 1948. Raymond A. Vonderlehr died in January of 1973, barely six months after Jean Heller of the Associated Press broke the story of the Study of Untreated Syphilis in the Negro Male that he led.¹¹

Of all these major figures in Virginia's eugenic history, only Ivey Lewis, Harvey Jordan, John Powell, and Earnest Sevier Cox would live to see the steady dismantling of segregation after *Brown*. Retired from their academic positions, Lewis and Jordan still garnered local respect but no longer had any significant national influence. Powell's star dimmed slowly, leaving him to retire quietly, splitting his time between Charlottesville and Richmond. In 1951, Governor John Battle, a distant relative of Ivey Lewis's, declared November 5 "John Powell Day" in honor of his achievements. Powell died in August 1963, just months before President Kennedy's assassination and President Johnson's advocacy of "the earliest possible passage of the civil rights bill" proposed by the slain president.¹² Neither the Charlottesville *Daily Progress* nor the Richmond *Times-Dispatch* mentioned his work for the Racial Integrity Act in their obituaries.¹³ Lewis died in March of 1964, after witnessing the ratification of the Twenty Fourth Amendment outlawing the poll tax, a traditional means of disfranchising black voters. Old age finally felled Earnest Sevier Cox, the mainline eugenicists' last man on the field. Marginalized and largely

¹¹Jones, *Bad Blood*, 1.

¹²Johnson quoted in John Hope Franklin and Alfred A. Moss, Jr., *From Slavery to Freedom: A History of African Americans*, 7th ed., (New York: McGraw-Hill, Inc., 1994), 507.

¹³J. David Smith, *The Eugenic Assault on America: Scenes in Red, White and Black* (Fairfax, VA: George Mason University Press, 1993), 57.

forgotten, Cox died as he lived, advocating racial separatism. By the end, his politics had evolved beyond the pale and his only associations remained with the most hard-bitten white supremacists.

Beginning with the *Brown* decision, Cox began alligning himself with the most ardent segregationists and white supremacists in the South. His correspondence contains letters from Citizens' Councils, The Christian Party, The Southern Gentleman's Organization, The Nationalist Information Association, The American Society for the Preservation of State Government and Racial Integrity, and various other white supremacist and deeply anti-Semitic organizations. He sent all of these groups large numbers of his tracts, which they distributed and recirculated over and over again.¹⁴ In 1958, Cox wrote to the Citizens' Council of Jackson, Mississippi, "You are doing a great work. Warren and men of his mentality will not be able to mulattoize [sic] the white South." He enclosed his two dollar membership fee.

Cox's correspondence with Wickliffe P. Draper, the New York textile magnate who had financed so many of Cox's publications, ended in 1957. In his last letter to Draper, Cox noted that "I have willed \$5,000 to the University of Virginia to have them evaluate the great numbers of letters from Negroes to me as evidence of the Negro desire for separation."¹⁵ There is no evidence that the University of Virginia ever received this money. The executors of Cox's estate turned his papers over to Duke University.

By 1955, Cox's Teutonism began to take a sinister turn. Not only had he published Teutonic Unity in 1951, but he gradually aligned himself with many former Nazi officials. In 1955 he received a latter from Dr. Johann von Leers, living in exhile in Buenos Aires. After expressing his hearty sympathy with the "tragical history of the Teutonic group,

¹⁴Citing all of the correspondence with these prominent and splinter organizations would be nearly impossible. Any survey of the Earnest Sevier Cox Papers, Rare Book, Manuscript, and Special Collection Library, Duke University, Durham, especially Boxes 9 through 14, readily reveals the wide extent of this correspondence. Cox's ability to administer these contacts inspires awe; he lived and breathed white supremacy. [Hereinafter cited as Cox Papers.]

¹⁵Earnest Sevier Cox to Wickliffe P. Draper, September 14, 1957, Box 12, Cox Papers.

undergroup of the great Nordic race," von Leers told Cox, "I think the fundamental ideas of your book should be made public and spread, either by openly publishing it or by founding a society to spread these ideas in selected and active groups of the Teutonic Nations." Doctor von Leers told Cox that for "some months I am preparing the foundation of a society to spread racial knowledge and racial science" and he believed that Cox's book "should be the centre of such activities." Dr. von Leers noted that he had been a professor of history at the University of Jena, an epicenter of Nazi eugenics. At Jena, von Leers had "participated in the indoctrination of Hitler's Body-Guard SS, to which I belonged," so naturally now, ten years later, he found himself "surprise[d] that more or less all what was the central idea of our thinking and indoctrination I find again in the book of an American writer...." The historian agreed with Cox's fears of "the menace of the 'rising tide of colour'," and told him that, "I am glad you are a Southerner—a grand uncle of mine fought in the army of general Lee." Doctor von Leers recounted his escape from American and Russian troops and his flight to "this wonderful, free Argentina." He concluded the letter by giving Cox the names of other former Nazis living in America "who can be useful to your ideas" and "understand the problem and can do more to spread the ideas as for instance a halfjewish [sic] congressman or newspaperman in Washington."¹⁶

Cox's contact with von Leers precipitated his rapid slide into neo-Nazism. On May 28, 1955, Cox replied to a letter from Dr. Hans F. K. Günther, one of the Nazi's most prolific writers on racial matters, apprising him of the current American racial attitude which "is best set forth by our immigration laws."¹⁷ Cox, of course, knew that the "current"

¹⁶Dr. Johann von Leer to Earnest Sevier Cox, May 21, 1955, Box 10, Cox Papers. Ten days later, the Supreme Court of the United States would rule on the implementation of the school desegregation decision. In a later letter, von Leers wrote that he and Cox should work to "spread these ideas of your book and the great thinkers about race, as Gobineau, Vacher de Lapouge, Madison Grant, Lothrop Stoddard, Günther." He felt the center of this activity "must be located in the USA, for the great decisions about the future of mankind will fall there." Johann von Leers to Earnest Sevier Cox, July 14, 1955, Ibid.

¹⁷Earnest Sevier Cox to Professor Doctor Hans F. K. Günther, May 28, 1955, Box 10, Cox Papers. Günther had contacted Cox in February of 1955, asking him for another copy of *White America* and a copy of *Teutonic Unity*, which Cox gladly supplied. Günther replied in September of 1955, apologizing for the

immigration law was the Immigration Restriction Act of 1924, still in effect thirty-one years later; a reflection of past attitudes and present complacency. In July of 1955, Cox corresponded with former Nazi officer Friedrich Kuhfuss, exiled in Barcelona, Spain. Cox sent Kuhfuss a copy of *Teutonic Unity*. Kuhfuss, in thanking Cox, expressed his sympathy with racial integrity in broken English. "[W]e nowadays are living in a period which has no parallel in history," Kuhfuss averred, "it is the division of Black and White in the Nations, White keeping up its value and uniting itself in its Value in order to fight Black, which is ruin, melting itself into one and the same pulpy [sic]."¹⁸

In 1958, Cox helped to organize a "Germanic homecoming"—to celebrate "Herman the German," the racial ancestor of all Teutons—held in the Teutoberger forest where Herman had fought a battle that "preserved the Germanic peoples as known to history."¹⁹ "I had wanted the homecoming in its initial stage to be featured as a tourist attraction and to be given wide publicity," Cox wrote a German correspondent.²⁰ He worked with the British publisher of *Northern World*, a periodical dedicated to "Pan-Nordic Friendship" to publicize the event. In August of 1958, Cox contacted former Nazi Admiral Dönitz and sent him copies of *Teutonic Unity*.²¹ After all his work, Cox travelled to Germany for the meeting, which finally took place in late 1959. Cox delivered his address "Herman's Brother" in which he described Old Americans as the Teutonic next-of-kin to Germans. Cox described the monument erected in honor of Herman as "the racial shrine of Germanic peoples."²²

delay because caused by the press of his work in advancing a "Society of the Friends of Gobineau" in Europe. Hans Günther to Earnest Cox, September 27, 1955, Ibid. [This letter is in German.]

¹⁸Friedrich Kuhfuss to Earnest Sevier Cox, July 19, 1955; Cox to Kuhfuss, July 27, 1955; Kuhfuss to Cox, July 31, 1955, Ibid.

¹⁹Earnest Sevier Cox to Wilhelm Ladewig, n.d., Box 11, Cox Papers. Cox began corresponding with Ladewig in 1955. See Wilhelm Ladewig to Earnest Sevier Cox, October 31, 1955, Box 10, Ibid.

²⁰Earnest Sevier Cox to William Schaumann, April 9, 1958; and Earnest Sevier Cox to Wilhelm Ladewig, April 11, 1958, Box 13, Cox Papers. Ladewig had served in the SS and was living in West Germany.

²¹Earnest Sevier Cox to Admiral Dönitz, September 26, 1958, Box 13, Cox Papers.

²²Earnest Sevier Cox to Wilhelm Ladewig, February 24, 1959; and Earnest Sevier Cox to William Harris [publisher of *Northern World*], January 4, 1960, Box 13, Cox Papers.

Cox spread his neo-Nazism in America, too. He put the elderly John Powell in touch with Wilhelm Ladewig in 1956, a correspondence that continued until at least late 1961.²³ Beginning in 1960, Cox began to align himself with the American Nazi Party (ANP), founded in Northern Virginia by George Lincoln Rockwell. He sent the group his address "Herman's Brother" and wrote, "I would like for you to tell Commander Rockwell that I have read the *American Program* and other matter that you sent to me and that I recognize that there is high merit in the composition of these articles and that I am in sympathy with the genral ideas expressed in them." Cox noted his "especial" agreement with Rockwell's "liberal proposals for our Negroes who want to settle in their ancestral continent."²⁴ In 1962 he sent the ANP several hundred copies of his pamphlet "Lincoln's Negro Policy" which, typically, advocated repatriation.²⁵

During the early 1960s Cox also established contact with Carleton Putnam, the North's most extreme advocate of segregation and mainline eugenics during the desegregation crises.²⁶ Throughout this period, he worked on his rambling memoir, *Black Belt Around the World*, which he published in late 1963. Exhausted from the labor of recounting his "research" journey around the world, which formed the basis for all his later ruminations on race and repatriation, Cox died in 1964.²⁷

By 1953, most of the founding generation of Virginia's eugenicists had died or retired. Active inculcation of main-line, racialized eugenics decreased among Virginia's university

²³Earnest Sevier Cox to Wilhelm Ladewig, n.d. [internal dates suggest December of 1956 or January of 1957] Box 11; and Earnest Sevier Cox to Wilhelm Ladewig, December 27, 1961, Box 14, Ibid.

²⁴Earnest Sevier Cox to American Nazi Party, May 25, 1960, Box 14, Ibid. Cox's correspondence with the American Nazi Party is contained throughout Box 14 and runs intermittently from 1960 to 1962.

²⁵Karl R. Allen [Captain and National Secretary ANP] to Earnest Sevier Cox, September 22, 1962, Box 14, Ibid.

²⁶Putnam wrote *Race and Reason: A Yankee View* which rehashed antiquated mainline eugenic arguments about race mixing. Carleton Putnam to Earnest Sevier Cox, June 22, 1962, Box 14, Ibid. Edith Nelson brought Cox to Putnam's attention ealier that month. Edith Nelson to Carleton Putnam, June 14, 1962, Ibid.

²⁷All of Cox's American Nazi Correspondence, as well as his letters to and from Carleton Putnam, are located in Box 14, Cox Papers. The Citizens' Council of Mississippi sent Cox a complimentary copy of Putnam's book in July of 1961.

population. The momentum of the movement lingered on, however, in the minds and professional behavior of people educated throughout the early period; people who now held positions of authority in Virginia's public administration. Sterilizations actually increased in the 1950s, despite the revelations of Nazi atrocities. The moral re-evaluation of science's complicity in the Holocaust and total warfare (firebombing of civilian populations and the use of nuclear weapons) was not powerful enough to corrode the bonds between science, religion, and the eugenically-justified, racialized social order in Virginia. Moreover, with the rise of Massive Resistance, provided many Virginians with an excuse to disregard the most current biological theories of heredity. Instead, they chose to fall back upon antiquated eugenical theories to defend their crumbling social order.

* * * *

"Partially a Eugenic Report": The Hereditarians Respond to Brown

Approaching retirement, Ivey Lewis promoted segregation with characteristic tact: through a few well placed articles and congratulatory remarks to others fighting civil rights. Earnest Cox continually sought Lewis's aid in popularizing repatriation, no longer as a solution to the "Negro Problem" of old, but rather as a way to make desegregation unnecessary. In response to the 1951 publication of Cox's book *Teutonic Unity*, Lewis wrote, "I am in hearty agreement with what you say about the Negro in the United States, and the skill with which you develop the case for repatriation is admirable. Yours is the only possible solution to avoid the disaster of miscegenation." Lewis then complained, in a veiled reference to the NAACP, that "It is tragic that government by minority gives such power to organized groups that hold the balance of power in our large cities." Lewis concluded by asking Cox for "a book from you along the lines of *White America* with sole emphasis on *repatriation* rather than *migration* of Negroes."²⁸

²⁸Ivey Foreman Lewis to Earnest Sevier Cox, January 13, 1952, Box 9, Cox Papers. Lewis noted that he "disagree[d] with much of" Cox's book. Principally, it would seem that he did not like the fawning stance Cox took toward the Germans. Nor did the deeply religious and virulently anti-Semitic Lewis approve of Cox's characterization of Christianity as having, "a Jewish background if we deem the Jew a

Cox, for his part, kept Lewis apprised of Senator William Langer's attempts to introduce a repatriation bill in Congress. Lewis's reluctance to take the stage in favor of these bills, however, reveals the limits even he would put on the types of political action in which he was willing to engage. Just as Lewis found it politically and professionally inexpedient to address eugenics through the Virginia Academy of Sciences in the 1920s, in the 1950s Lewis avoided public comment on Cox's most extreme measures. Asked by Cox to testify in favor of the Langer bill in 1955, Lewis replied lamely, "At the moment I am at the mercy of my dentist, who told me not to make any public appearance for the next four weeks. When do you expect a hearing on the bill?"²⁹ Lewis then asked for a copy of Cox's "little book so unfairly reviewed in the *Times-Dispatch*." That "little book" was Cox's most recent manifesto, *Unending Hatred*.

The full title of Cox's pamphlet, *Unending Hatred: Supreme Court School Decision a Milestone in the Federal Program to Break the Will of the White South in its Dedicated Purpose to Remain White*, while inelegant, revealed the content of the text. Attempting to bring public pressure to bear on the Supreme Court as they debated the implementation of *Brown*, the pamphlet went through two printings in March and April of 1955. Cox distributed it to "members of the State Legislatures, Members of Congress and certain State officials of the 17 States" with segregated schools. He also must have sent copies to all the justices of the United States Supreme Court.³⁰ Cox rehashed all his usual arguments,

Semite," despite the fact that Cox noted that "the modern Jew is not a Semite save in a very minor proportion of his blood." Cox wrote back explaining, "This work was begun with the view of keeping the ports of Africa open for the repatriation of our Negroes had Hitler won the war." Unable to contain his Teutonism, Cox added, "The viewpoint is such that it serves prostrate Germany as it would have aided us had Germany been triumphant." Clearly he felt that his book would provide, as its subtitle suggested, "A Basis for Peace," through the unity of all Teutonic people. Earnest Sevier Cox to Ivey Foreman Lewis, January 19, 1952, Ibid. Earnest Sevier Cox, *Teutonic Unity: A Basis for Peace* (Richmond, VA: Published by Author, 1951), quotations 51, also 63-66.

²⁹See Earnest Sevier Cox to Ivey Foreman Lewis, May 8, 1955; and Ivey Foreman Lewis to Earnest Sevier Cox, May 12, 1955, Box 10, Cox Papers. Lewis then suggested Professor E. J. Oglesby of the University of Virginia mathematics department. Lewis wrote, "He is a man of conviction and not afraid to speak out....Shall I approach him on the subject?" Cox replied in the affirmative, Earnest Sevier Cox to Ivey Foreman Lewis, May 17, 1955.

³⁰I assert this because I first came across the pamphlet in Justice Harold Hitz Burton's Papers at the Library of Congress. See "Printed Matter 1955" folder, Box 405, Harold Hitz Burton Papers, Manuscripts

particularly that, "When races are in contact there will be a race problem. Such problem cannot be solved save by the process of racial separation, which will preserve the races; or by the process of amalgamation, which will substitute a mongrel type for the races involved." Cox coupled this with his own conspiracy theory. "Gentle Reader," Cox wrote, "The Communists would have given a million dollars for the Supreme Court decision integrating the races in the schools for it certainly would cause internal dissention [sic] in the only nation feared by the Communists." Finally, Cox asserted, "The opposed ideals of segregation and integration are merely social phases of the race problem which, itself, is of a biological nature and will continue through various phases until it is settled by the blood amalgamation of the races or their geographic separation."³¹ By 1955, in the wake of McCarthyism, such overheated rhetoric garnered support only among firebreathers like Cox himself. Very few scientists were willing to come out in defense of Cox's "mongrelization" thesis. The eugenic metaphor had almost completely broken down and was beginning to be seen for what it had always been: a scientific veneer for unending hatred.³² Ivey Lewis preferred to keep a lower profile than did Cox, and his correspondence with Cox tapers off after 1955.

Nevertheless, people from the North and South continued to approach Lewis for assistance fighting desegregation. As Charles Clark's letter from 1954 revealed, Lewis had a powerful effect on many of his students, and they turned to him for advice and leadership

Division, Library of Congress, Washington, D.C. Cox told Lewis that, "More than 4,000 of the pamphlets have been mailed out. One organization in Mississippi took 1,000 at the cost of printing." Not surprisingly that organization was the White Citizens Council. See Robert B. Patterson, Secretary of Association of Citizens' Councils of Mississippi to Earnest Sevier Cox, April 1, 1955, Box 9, Cox Papers.

³¹Earnest Sevier Cox, *Unending Hatred*, Ibid., 42.

³² Cox's pamphlet, however, was not without its many admirers among white supremacists. Indeed, Ivey Lewis's sister, North Carolina newspaper editor Nell Battle Lewis wrote, "I am very glad to have your booklet, and I thank you for it. I have read it with much interest and approval. I shall probably quote from it from time to time in my column in The Raleigh News and Observer. I shall also recommend it to my brother, Dr. Ivey F. Lewis, for years Dean of the University of Virginia, now retired and living in Charlottesville." Nell Battle Lewis to Earnest Sevier Cox, April 18, 1955, Box 10, Earnest Sevier Cox Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham.

after the *Brown* ruling. Clark explicitly connected eugenics and resistance to desegregation when he described his letter as "partly a eugenic report," and then went on to decry *Brown* as opening the gate to miscegenation and the end of civilization.³³ In a 1955 letter to Lewis, J. Segar Gravatt, a lawyer in Blackstone, Virginia wrote, "I feel that we need to assemble and get before the people the biological opinion which points up the evil consequences of integration of the races." Apologizing for "imposing" on Lewis for help in this matter, Gravatt closed promising to "find a convenient opportunity to have a personal talk with you about the integration problem generally."³⁴ Whether and when such a meeting took place is unrecorded; what is certain is that, in the appropriate situation, Lewis remained vocal in his agreement that "the color line must be maintained in spite of hell and high water."³⁵

Lewis militated covertly against school integration, but he took a prominent stand against the integration of his church, St. Paul's Episcopal in Charlottesville. From 1915 forward, Lewis's papers show that he had been extremely active in church and diocesan activity. In 1958 he was serving as a vestryman at St. Paul's when the pastor decided to allow a group favoring interracial cooperation to use one of the church buildings for a meeting. In response to Pastor Theodore "Ted" Evans's defense of this decision, Lewis organized and led a protest within the church. These individuals approached the Episcopal Bishop in Richmond, who informed them that there was nothing he or they could do—Pastor Evans was within his rights, by the light of church doctrine, in allocating church facilities as he saw fit. Lewis, always the southern gentleman, apparently backed down without raising further ire, although the church remained divided over the issue of

³³Charles Clark to Ivey Forman Lewis, December 29, 1954, "1954 Letters" folder, Box 1, Ivey Foreman Lewis Collection 5119a, Department of Special Collections, Alderman Library, University of Virginia, Charlottesville. See the discussion of this letter in Chapter 6, above.

³⁴J. Segar Gravatt, esq. to Ivey Lewis, October 3, 1955, "1955 Letters" Folder, Box 1, Dean's Papers.

³⁵John D. Martin, jr. to Ivey Lewis, January 16, 1948, "M" Folder, Box 7, Dean's Papers.

integration for a number of years.³⁶ Lewis was not, of course, the only staunch Christian in favor of segregation. The Reverend G. MacLaren Brydon reaffirmed Lewis's beliefs, "hop[ing] and pray[ing] that we will win our contention in the long run and be able to keep our separate schools."³⁷ To Lewis, desegregation challenged not merely his culture, but his scientific belief that society ordered itself along lines delineated by natural law operating through heredity. Desegregation challenged the operation of these laws and, by extension, it challenged Lewis's view of God.

Throughout his career, Lewis's impact was national in scope, although strongest in the South. This regional diversity reveals the strength of eugenics' appeal, and its ability to forge an ideational bond between northerners and southerners. Eugenical ideology helped, for a time, to bolster the notion of the South's regional distinctiveness as a land of explicit segregation justified, at least by some, on eugenic grounds. At the same time, however, eugenic ideology narrowed the gap between North and South, making the South, in the words of Grace Hale, "no longer distinct in its regional racial order, no better and no worse than the rest of an often racist and often segregated American union." Eugenics forged another ideological link chaining American identity to whiteness, and segments of American society to racial inequality.³⁸ Nevertheless, the overt racism of mainline eugenics had become, by 1950, scientifically untenable. With the passage of the UNESCO "Statement on Race" in 1952, it seemed that scientific racism had run its course. Optimistic

³⁶Interview with Raymond A. Bice and Franklin Bacon, 15 December 1999, tapes in possession of author. Mr. Bacon, who also served as a vestryman at St. Paul's, recounted this incident. Lewis apparently never showed outward anger; he merely lodged his protest with the minister and, failing satisfaction, took it to the higher authority.

³⁷Reverend G. MacLaren Brydon, D.D. to Ivey Lewis, September 6, 1958, "1958 Letters" Folder, Box 1, Dean's Papers.

³⁸Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Pantheon Books, 1998), 294. Philosopher Charles Mills reveals the operation of an implicit "racial contract" within the social contract theory of liberal western societies. The result is a society ultimately founded, in part, on racial subordination. In many ways, the efforts of Lewis and other eugenicists sought to reveal and sustain the terms of the racial contract by justifying them on the grounds of scientific natural law. Charles Mills, *The Racial Contract* (Ithaca, N.Y.: Cornell University Press, 1997).

observers, however, clearly misunderstood the time lag between changing science and changing social policy.³⁹

While racist beliefs may have undermined the salience of eugenical theory in the short term, they point to the real importance of eugenics in relation to civil liberties in the long term. The apparently rational basis of eugenical conclusions immunized their racism from legal scrutiny. The eugenical precepts used to mask racism in 1924 became in 1954 the supports which justified the Virginia Supreme Court of Appeals action in *Naim v. Naim*, and *Naim* became the precedent on which that same court upheld the Lovings' subsequent miscegenation convictions. The serviceability of eugenical theory in justifying Virginia's racial classifications resulted in the Racial Integrity Act surviving for 11 years after *Naim*.

* * * *

David Carliner's Revenge: The *Naim* Cases⁴⁰

It is unlikely that Chinese sailor Ham Say Naim ever heard the word miscegenation before he jumped ship in 1942. Eleven years later Naim, still a Chinese national, sat in Judge Floyd E. Kellam's Portsmouth, Virginia Circuit Courtroom. His wife of twenty months, Ruby Elaine Naim, a white woman, sought a divorce on the grounds of adultery. Choosing not to rule on the divorce action, Kellam granted Ruby Elaine Naim an annulment under the aegis of the Racial Integrity Act (RIA).⁴¹ These statutes decreed interracial marriage—because of its result, miscegenation—illegal and "void without decree" in Virginia. Ham Say Naim's lawyer appealed the case, through the Virginia

³⁹United Nations Educational Science and Cultural Organization, *The Race Concept: Results of an Inquiry* (Paris: UNESCO, 1952). This statement finally demolished the notion of race as anything other than a socially constructed category invoked for convenient reference and devoid of scientific import. See Elazar Barkan, *The Retreat of Scientific Racism: Changing Concepts of Race in Britain and the United States Between the World Wars* (Cambridge: Cambridge University Press, 1991), 341–343.

⁴⁰The following section draws heavily on my article, Gregory Michael Dorr, "Principled Expediency: Eugenics, *Naim v. Naim*, and the Supreme Court," *American Journal of Legal History* 42 (1998): 119–59.

⁴¹Sections 20-54 through 20-57 of the Virginia Code of 1950. For more on the Racial Integrity Act, see Chapter Six.

Supreme Court of Appeals, to the United States Supreme Court in the October Term of 1955. In a surprising series of events, the case bounced between the Supreme Court and Virginia's highest court. The case ended in March 1956 when the Supreme Court, in a cryptic memorandum decision, ruled that "The decision of the Supreme Court of Appeals of Virginia [reaffirming their support of Judge Kellam's decision] leaves the case devoid of a properly presented federal question."⁴² The United States Supreme Court thus let stand a state's right to restrict marriage between the races. A decade passed before the Court again considered racial classifications in marriage law. In *Loving v. Virginia*,⁴³ another challenge to Virginia's RIA, the Court struck down antimiscegenation statutes, removing the last legally-enforced barrier facing Americans of color.

Ham Say Naim, born in Canton, China, arrived in the United States as a cook aboard a British merchant vessel in 1942. Upon docking, Naim jumped ship in search of the American dream. "I got off English ship and got on American ship to make more money," Naim testified.⁴⁴ In 1947, Naim made the National Maritime Union in Norfolk his home port. Ruby Elaine Naim, nee Lamberth, born in Saginaw, Michigan to white parents, arrived in Norfolk Virginia on April 3, 1952. Sometime between the 15th and the 20th of April she met Ham Say Naim. Following a whirlwind courtship, the couple moved in together.⁴⁵ Informed that Virginia barred interracial marriage, the couple attempted to

⁴²*Naim v. Naim*, 350 U.S. 985 (1956). Memorandum decisions, known as *Per Curiam* decisions in the parlance of the law, unlike other Supreme Court decisions, are not attributed to one justice writing for a majority. As a result, *Per Curiam* decisions are often seen as indicating the unanimous decision of the court.

⁴³*Loving v. Virginia*, 388 U.S. 1 (1967).

⁴⁴Quotation from, "Partial Record, Reporter's Transcript, Portsmouth Case File," Chancery Docket Number 9319: Ended Case Number 452: box 2, page 12. [Hereinafter Portsmouth Case File, box number, page number if applicable]

⁴⁵Interview with David Carliner, November 3, 1995. Tape in possession of author.

evade the RIA by driving to Elizabeth City, North Carolina to be married. After the wedding, the couple settled in at 247 West Freemason Avenue in Norfolk.⁴⁶

About a year after she met and married Ham Say Naim, Ruby Elaine Naim wrote her seafaring husband, cook aboard the S. S. Lipari, an eleven page love letter. Her letter evokes the classic image of the mariner's wife:

I do love you, and tho [sic] it has been very hard while your [sic] gone...t is still you I love with every breath in me. I won't ever give you up and you know it....Even if you should leave the U.S. there are ways I can bring you back....You and the baby are everything in the world to me....You are mine Darling so never forget it. I would kill any other woman I even caught near you.⁴⁷

The long separations while Ham was on a cruise eventually took their toll.⁴⁸ Apparently the devoted wife, Ruby only wished for stability—which the couple hoped to achieve through Ham's naturalization.

Still a Chinese national, Ham had engaged Immigration attorney David Carliner of Alexandria, Virginia to assist in his naturalization. By September of 1953, the situation looked bleak for Ham Say Naim. His seaman's visa was to expire on the 27th. Ruby visited Ham in New York City around the 19th, stopping by Carliner's office on the way home. She wrote to Ham on the 29th, "Ham, this whole mess is just too much for me to try and contend with. I can't take any more and sincerely feel it best to get completely out of the whole situation. In other words, I would appreciate my freedom."⁴⁹ The strains of separation, bureaucratic uncertainty, and financial pressure appear to have propelled an otherwise happy couple to divorce. Trial events shatter this image, indicating ways in which other cultural factors involving class, gender, and eugenics influenced the case.

⁴⁶"Partial Record, Reporter's Transcript," 5-7, 14.

⁴⁷Defense Exhibit No. 5, Letter REN to HSN, 17 April 1953, Portsmouth Case File, box 1, 7.

⁴⁸From the testimony preserved in various documents in the case file, the couple may have been apart for as many as ten of the sixteen months they were married before Ruby filed for divorce.

⁴⁹Defense Exhibit No. 9, Letter REN to HSN, 29 September 1953, Portsmouth Case File, box 1.

Serendipity brought David Carliner and Ham Say Naim together. When Ruby Elaine Naim filed for annulment, it was only natural that Ham Say Naim turned to Carliner, who was acting as his immigration lawyer, for counsel. *Naim* presented Carliner with the chance of a lifetime, the opportunity to argue a civil rights issue before the United States Supreme Court. "I had been personally involved in antidiscrimination movements all my adult life," Carliner remembered forty years later, "I wanted to win the case as a matter of principle."⁵⁰ Besides being a member of the American Civil Liberties Union, Carliner had been involved in civil-liberties activism since his college days at the University of Virginia. Carliner had been expelled from the University of Virginia by Ivey Foreman Lewis as a result, in part, of these activities.⁵¹ Carliner completed his training at National University Law Center (now Georgetown Law Center). Admitted to the bar of the U.S. Supreme Court in 1953, Carliner appealed five cases to the Court, appearing twice, before *Naim v. Naim*.⁵² Carliner viewed *Naim* as his chance to enlarge the civil rights protections guaranteed by the Fourteenth Amendment.

Carliner needed to neutralize the divorce claim and allow the court to annul the marriage to establish the constitutional grounds for an appeal. Ironically, while eight years earlier Walter A. Plecker had urged pressing for annulments under the miscegenation statute as a way of upholding the RIA, David Carliner needed to "achieve" such a conviction to undermine the act.⁵³ Ruby Elaine Naim sought to end the marriage either under the aegis of the RIA, or through absolute divorce. The grounds for absolute divorce stemmed from

⁵⁰ Carliner Interview, November 3, 1995.

⁵¹ Carliner's expulsion is recounted in Chapter 7. It is one of the finer ironies of Virginia eugenical history that David Carliner should bring the first substantial challenge to the RIA before the United States Supreme Court. Carliner Interview, November 3, 1995.

⁵² Westlaw Citation Search, David Carliner.

⁵³ See Dorr, "Principled Expediency," 128.

her allegation that Ham Say Naim committed adultery in November of 1952.⁵⁴ Ruby, however, appears to have engaged in marital impropriety herself. During August of 1953, Ruby wrote her mother, "I'm going to check on the ship tomorrow with New York and I'll let you know as soon as things are straightened out between us. Please don't worry about it as Stan is still with me and I know he won't let anything or anyone harm me. . . ."⁵⁵ She signed the letter, "Love to all, Ruby and Stan." In the letter, Ruby refers to her children—Bonnie and Rita—both born out of wedlock and in Ruby's mother's care. Rita, the child Ruby mentions in her letters to Ham Say Naim, appears to have been the daughter of the man Ruby took up with during the summer of 1953, Stanley William Bridinharn, Jr.⁵⁶ Carliner entered all this information into the record to deadlock the divorce claims.

Carliner also contested the annulment of the marriage under the "full faith and credit" provision of the Constitution. This clause ordinarily requires each state to regard as valid all actions lawfully performed in other states. The time honored doctrine held that a marriage valid where celebrated is valid everywhere.⁵⁷ The framers of the Virginia law anticipated this sort of "conflict of laws" challenge. So, the Racial Integrity Act went beyond invalidating interracial marriages celebrated in Virginia. The law also denied recognition of any interracial marriage, regardless of its legality where performed. The RIA also prescribed criminal penalties for parties—like the Naim's—who left the state to avoid the law and marry. It also prohibited interracial couples from living together "as man

⁵⁴The complaint filed before the Supreme Court of Appeals reads, "Your complainant [Ruby Elaine Naim] further alleges that the said defendant [Ham Say Naim] committed adultery on the 7th and 8th days of September, 1952, with "Kay" of Mowbray Arch, in the City of Norfolk, Virginia. . . ." Virginia Supreme Court of Appeals, *Records and Briefs*, 197 Virginia Reports 69, 2.

⁵⁵Defense Exhibit No. 1, REN to Mother, 24 August 1953, Portsmouth Case File, box 1.

⁵⁶See, "Motion to Vacate Order for Alimony," February 19, 1954, Portsmouth Case File, box 2; and, Defense Exhibits Nos. 1, 2, and 4 (a series of letters between REN and her Mother), Portsmouth Case File, boxes 1 and 2.

⁵⁷For a contemporaneous study of marriage and the issues surrounding conflict of laws, see, Charles W. Taintor, "Marriage in the Conflict of Laws," *Vanderbilt Law Review* 9 (1956): 607–32.

and wife," a prohibition on interracial fornication. The RIA's stringent racial classifications and well-developed prohibitions wove a seemingly inescapable net.

In trying the case, Carliner never directly contested the right of the state to regulate marriage through racial classifications. Moreover, Carliner never contested the "reasonableness" of the classifications—whether racial classifications existed upon a "rational basis." Rather than shifting to "sociological jurisprudence" as would be done in *Brown* two years later, Carliner attempted to achieve victory on legal precedent. He tried to prove that the race of the parties could not be determined with any accuracy, following the precedent set by the Virginia Supreme Court of Appeals in *Keith v. Commonwealth*. In *Keith*, the court set aside a miscegenation conviction, holding that the burden of proof as to race lay with the state.⁵⁸ Carliner hoped to use Virginia's own legal history to batter down the RIA.

Carliner's examination of Ruby Elaine Naim elicited anger from the witness, yet it did not sway Judge Kellam. Carliner remembered, "I was trying to make a point, somewhat too cutely, How do we know this woman was all white? Her ancestry was from Indiana, and I asked her if she knew her grandparents and her great-grandparents, just to make certain that she was Caucasian. She turned to me with great hostility and yelled, How do I know that you're not black!" Carliner felt he could not have made the point any better. Judge Kellam did not agree. He allowed Ruby Elaine Naim and her witnesses to testify as to the race of Ruby and Ham, based solely on their visual impressions of the two, over

⁵⁸*Keith v. Commonwealth* 181 S.E. 283 (VA 1935). In *Keith*, the state failed to prove beyond a reasonable doubt that the alleged grandfather of the accused 1) was indeed his grandfather; and , 2) had Negro blood.

Carliner's exceptions. This line of logic held perfectly with the rulings of Judge Holt; Holt vindicated Atha Sorrells because she *appeared* white.⁵⁹

Appearances formed the basis for the determination of the Naims' case, too. After a grueling day of testimony, Judge Kellam proved that he "knew an easy case when he saw one."⁶⁰ "I hold that the marriage is void. Also, he is liable for counsel fees. So far as alimony, there is no alimony. That is the way I have felt all through this matter," Kellam snapped.⁶¹ Kellam's final order is equally terse. "It *appearing* to the court that the complainant is a member of the Caucasian race and the defendant not of the white race It is adjudged ordered and decreed that the marriage of the parties . . . is void." [emphasis added]⁶² "Appearing" was an appropriate word for Kellam to use, although "appearance" seems an unscientific way to enforce a "scientifically reasonable" statute. Nevertheless, the concept of "appearances" highlights how the decision squared with the law and with the dominant culture of the time—helping to maintain standards (appearances) of propriety.⁶³ Carliner remembered that Judge Kellam belonged to an important Portsmouth family, describing the Kellam's as "a political machine."⁶⁴ With this background, Kellam undoubtedly understood prevailing Virginia attitudes with regard to interracial marriage. Politically, it would have been inopportune for Kellam to rule in favor of Ham Say Naim.

⁵⁹Carliner Interview and "Partial Record, Reporter's Transcript," Portsmouth Case File, box 2, 3-4. Ruby Elaine Naim was born in Michigan, but her parents lived in Indiana at the time of the trial.

⁶⁰Wallenstein, "Race, Marriage, and the Law of Freedom: Alabama and Virginia, 1860s-1960s" *Chicago-Kent Law Review* 70 (1994), 416. A. A. Bangel, Ruby Elaine Naim's lawyer complained, "The case lasted until 6 o'clock that night." A. A. Bangel to Judge Floyd E. Kellam, 9 April 1954, Portsmouth Case File, Box 1.

⁶¹"Partial Record, Reporter's Transcript," Portsmouth Case File, box 2, 14.

⁶²Chancery Order Book 23 December 1953 - June 1954, Portsmouth Circuit Courthouse, Portsmouth. Also, Virginia Supreme Court of Appeals, *Records and Briefs*, 197 Virginia Reports 69, 5.

⁶³Eva Saks uses discourse theory to understand the logic of appearances in miscegenation law. Saks, "Representing Miscegenation Law," 58.

⁶⁴Carliner Interview, November 3, 1995.

Portentously, the case was docketed on the same day President Eisenhower appointed Earl Warren to the Supreme Court. That day, Virginia newspapers filled their pages with prognostications about how Warren's appointment might affect the disposition of the pending segregation cases. Racial tension blanketed Virginia's social landscape.⁶⁵ A ruling seen as giving any recognition to the legitimacy of an interracial marriage would have struck the most sensitive nerve in the collective southern consciousness—fear of men of color sleeping with white women. Granting a divorce would signal such tacit acceptance of the validity of the marriage, and by extension of interracial sexuality. The law dictated annulment; the social environment buttressed that decision, and Kellam complied with both directives.⁶⁶

Beyond the political/legal context surrounding this case, issues of class and gender complemented the racial appearances of the couple, increasing the likelihood of an annulment for miscegenation. Ham Say Naim's occupation as a cook reinforced his presumed racial inferiority—eugenically and socially. Testimony depicted Ruby Elaine Naim as a poor woman of questionable morals—she had two children born out of wedlock; she was an adulteress; and she appeared impetuous and quick tempered. At a time when divorces were hard to come by under the best of circumstances, Ruby Elaine Naim proved a poor supplicant for the court's favor. Indeed, she and Ham Say Naim perfectly fit the stereotype of candidates for eugenic reform. Their miscegenous marriage threatened racial

⁶⁵See, for example, the front and editorial pages of *The Richmond Times-Dispatch* and *The Norfolk Virginian Pilot*, October 3, 1953.

⁶⁶Examination of the newspaper coverage of the case revealed an interesting dichotomy. The white press reported the case in all its phases—from Kellam's decision through the U.S. Supreme Court's final denial. The African-American press, however, barely mentioned the case. They only commented when the Virginia Supreme Court of Appeals ignored the U.S. Supreme Court's order to return the case to the Portsmouth court for rehearing. This rebellious act alarmed African Americans; it was clearly a harbinger of rising southern "Massive Resistance" to school integration. One might speculate that the imbalance in coverage reveals the relative white paranoia and black indifference toward interracial marriage and sexuality. The African-American press may have intentionally ignored the case, proactively undermining any attempt by whites to claim that sexual equality was the true goal of *Brown*.

purity with the specter of "mongrelized" children. But more importantly, the low-class status of the couple reinforced eugenical beliefs that only the socially "unfit" engaged in interracial marriage. Ruby's children born out of wedlock bespoke a moral laxity, a "moral delinquency" for which the state of Virginia had routinely committed and sterilized individuals.⁶⁷ Eugenics offered permanent solutions to illegitimacy through controls on gender and sexuality. The children, and Ruby's inability to care for them herself, raised the issue of welfare—both in terms of the children's well being, and with regard to state provision of charitable support for the family. Eugenicists had argued for the RIA and Virginia's sterilization law to avoid this social encumbrance; society should not be burdened, according to Virginia eugenicists, with caring for the sub-standard progeny of unfit parents.

Carliner pronounced himself "well pleased" that Judge Kellam "appropriately granted an annulment rather than a divorce."⁶⁸ This outcome allowed him to pursue his appeal to the Virginia Supreme Court of Appeals, a body he was certain would affirm the decision of the lower court.⁶⁹ In the Virginia Supreme Court of Appeals, the state of Virginia relied on eugenics to uphold Kellam's decision.

Carliner had no doubt that Virginia's high court would affirm Kellam's decision. Thus, the hearing provided him with a dry-run for the strategy he hoped to use before the U.S. Supreme Court. The Court asked State Attorney General, J. Lindsay Almond, Jr. (who subsequently would become infamous as the Massive Resistance governor of

⁶⁷Paul A. Lombardo, "Three Generations, No Imbeciles," 30-62. The term "moral delinquent" described the feeble-minded during *Buck v. Bell*, but in practice it became a label under which virtually any (particularly lower-class female) person might be committed and sterilized. Indeed, individuals of apparently normal or near-normal intelligence were *more likely* to be sterilized as, "sterilization was usually performed upon persons thought capable of being discharged from the institution to the community." Sterilization removed the threat of unwanted pregnancy at the source; one no longer needed to reform an individual's moral sense to control reproduction.

⁶⁸Carliner Interview, November 3, 1995.

⁶⁹*Ibid.*

Virginia) to file an *amicus curiae* brief. The state's brief, as it turned out, hinged upon state rights and eugenical arguments—reasoning the court would adopt in its opinion.

Carliner sought to convince Virginia's justices that only federal courts had jurisdiction over cases involving racial classifications, and that federal courts would strike them down as repugnant to the Fourteenth Amendment.⁷⁰ He argued that the amendment's provisions "deny to the states the power to inhibit or to regulate the exercise of any civil or political rights of persons based upon the sole consideration of their race or color."⁷¹ Carliner favored the broadest possible construction of the Fourteenth Amendment, which would limit state courts' and legislatures' control over personal liberty. Carliner effectively elevated the marriage contract to a more sacrosanct position. States did not, in Carliner's view, have the power retard personal liberty in *any* area of civil life on the basis of racial classifications.⁷²

Relying on the language in *Meyer v. Nebraska*,⁷³ Carliner attacked the relationship between the state's police power and the racial classifications upon which the RIA stood. Quoting liberally from Justice McReynold's 1923 opinion, Carliner asserted that the Fourteenth Amendment assured,

the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry . . . and generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The established doctrine is that this liberty may not be interfered with under the

⁷⁰For a detailed discussion of Carliner's strategy, see Dorr, "Principled Expediency," 135–38; Carliner, "Petition for Appeal," in *Records and Briefs*, 197 Virginia Reports 69, 7.

⁷¹Carliner, *Ibid.*, 8.

⁷²Other contemporary commentators recognized this dimension of the case. The first editorial note in the first edition of the *Howard Law Journal* concerned the appeal of *Naim* to the Virginia Supreme Court of Appeals. "The case . . . goes to the heart of the matter of racial segregation and poses a question which [in light of the *Brown* and *Bolling v. Sharpe* decisions] . . . demands a more searching inquiry into the legal grounds generally used to sustain these miscegenation statutes." PLD, "The Constitutionality of Miscegenation Statutes," 1 *Howard Law Journal* (1955): 87. The note asserts, "It is submitted that miscegenation statutes deprive the parties against whom they operate of liberty without due process of law," expanding the definition of liberty to include the right to marry and raise children. PLD, *Ibid.*, 92. David Carliner, "Reply Brief," in *Records and Briefs*, 197 Virginia Reports 69, 12–19, particularly 18.

⁷³*Meyer v. Nebraska*, 262 U.S. 390 (1923).

guise of protecting the public interest, by legislative action which is arbitrary or without *reasonable relation* to some purpose within the competency of the state to effect. [emphasis mine.]⁷⁴

One reading of *Meyer* places marriage among the guaranteed liberties. Another reading holds that *Meyer* establishes the grounds upon which marriage may be regulated. Using *Meyer*, Carliner conceded that marriage was subject to the control of the states, but he sought to distinguish between reasonable and unreasonable grounds for regulation—based on the law, not science. Carliner argued that state regulation of marriage, "may not be arbitrary, must have a proper governmental objective, and must have a reasonable relation to some purpose within the competency of the state to effect."⁷⁵ In Carliner's view, the RIA passed none of these tests.

Carliner claimed that the RIA was unconstitutional on its face. He tried to undercut the eugenical rationale of the Act by building an analogy between residential segregation created by restrictive housing covenants and racial purity. Since the United States Supreme Court had declared the former unconstitutional in 1948, Carliner believed the Virginia Supreme Court of Appeals had to rule that the RIA was repugnant to the Fourteenth Amendment, too.⁷⁶ Although residential segregation might ensure public peace and hence be a constitutional exercise of the police power, Carliner asserted that:

although the maintenance of racial purity was only an incidental purpose of the [housing] ordinance . . . , the basic arguments invoked in its support . . . were that the ordinances were a reasonable exercise of the police power to promote the health, peace, morals, and order of the public, that segregation did not constitute a deprivation of liberty or property without due process of law, and that the ordinances applied equally to affected persons.⁷⁷

⁷⁴*Meyer v. Nebraska*, 262 U.S. 390 (1923): 399, quoted in Carliner, "Petition for Appeal," in *Records and Briefs*, 197 Virginia Reports 69, 9.

⁷⁵Carliner, *Ibid.*, 9.

⁷⁶*Shelley v. Kraemer* 334 U.S. 1 (1948).

⁷⁷Carliner, *Ibid.*, 12.

Carliner argued two propositions. First, by relating failed segregation cases to the police power, he attempted to undermine the justification of the RIA as a reasonable exercise of the state's power to promote social order. Second, he endeavored to refute the logic of another miscegenation precedent, *Pace v. Alabama*, where the Supreme Court held that when penalties applied equally to both the black and the white parties, they were not discriminatory.⁷⁸ When Virginia made this same argument, Carliner retorted that in determining a person's right to marry, "the question cannot be whether the law is a 'prohibition upon both races alike and equally.' It must be whether *his* marriage is accorded that same protection afforded other marriages and if there is a distinction, whether that distinction is based solely upon a racial test."⁷⁹ Concluding that the appellant's marriage was indeed subjected to a racial test in determining annulment, Carliner challenged the constitutionality of the RIA on its face.

Carliner attempted to lift marriage above state regulation by extending precedents set in other civil rights decisions—not by questioning eugenical theory.⁸⁰ He contended that the Fourteenth Amendment limited states' power to make civil rights contingent upon race. Carliner implied the invalidity of the eugenic justifications for the RIA; but, he abandoned directly challenging the logic of eugenics, and hence the reasonableness of eugenically-based classifications. He merely asserted that, "It is settled that such a purpose [the

⁷⁸*Pace v. Alabama* 106 U.S. 583 (1882). In *Pace*, an Alabama miscegenation case, the Court held that since the penalties for interracial fornication were equivalent for the white and black convicted, there was no unequal application of the law -- even though the penalty for intraracial fornication (black/black or white/white unmarried sexual congress) was less severe. Carliner tried to undermine *Pace* using the Court's decision in *Shelley v. Kraemer*, "The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. . . . It is, therefore, no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities [among groups]." *Shelley v. Kraemer*, 334 U.S. 1 (1948), 22.

⁷⁹Carliner, "Reply Brief," in *Records and Briefs*, 197 Virginia Reports 69, 7 (emphasis in original).

⁸⁰The contemporaneous *Howard Law Journal* note makes the same argument. PLD, "The Constitutionality of Miscegenation Statutes," 93-95. The argument in the *Howard* piece, however, goes on to assert that since many of the miscegenation laws enforce their restrictions without formal trials, they are effectively bills of attainder and therefore unconstitutional. PLD, *Ibid.*, 95-97.

preservation of racial integrity] whether sound or wholesome, since the adoption of the Fourteenth Amendment has been neither a proper governmental objective nor within the competency of the state to effect."⁸¹ Any infringement upon personal liberty, according to Carliner's construction of the Fourteenth Amendment, was unconstitutional if based upon race.⁸²

Carliner's approach required a sympathetic court to be successful. Even his due process argument would require a hostile court to agree that, "however desirable 'racial integrity' may be to the Virginia legislature, the Fourteenth Amendment prohibits it from interfering with a person's right to choose whom he would marry, if the intrusion is based upon criteria of race or color." In Carliner's mind, "The Virginia legislature, perforce, must leave such questions to what is perhaps a more fundamental law, the law of natural selectivity."⁸³ Had he raised a challenge to the "scientific" justification of the Racial Integrity Act, Carliner might have forced the court to face directly the reasonableness of scientifically justified white supremacy. Carliner, however, had tied his own hands regarding Ham Say and Ruby Elaine Naim's racial classifications. Carliner submitted a statement of facts, rather than a complete transcript, to the higher court. Both sides stipulated that this statement contained all the salient testimony at the Portsmouth hearing that the higher court needed to consider.⁸⁴ Since the statement of facts stipulated the litigants' race, the Supreme Court of Appeals did not have to take notice of the original

⁸¹Carliner, *Ibid.*, 9.

⁸²These contentions come out most clearly in Carliner, *Ibid.*, *passim*.

⁸³Carliner, "Petition for Appeal," in *Records and Briefs*, 197 Virginia Reports 69, 13. It is ironic that Carliner advanced this "natural law" argument, so reminiscent of Jeffersonian thinking, against racial classifications that, themselves, purported to be based on natural law. Had he followed this line of reasoning, he may have mounted a more substantial challenge to the scientific underpinnings of the RIA.

⁸⁴"I believe the few facts which are germane to the issues raised on appeal. . .the testimony regarding the races of the parties --- are not in dispute, and that a statement of facts would adequately protect the interests of both parties. Under these circumstances. . .a transcript of the testimony is not warranted." Carliner to Judge Floyd E. Kellam, 8 April 1954, Portsmouth Case File, box 1. See also, A. A. Bangel to Judge Kellam, 9 April 1954; and, Carliner to Kellam, 13 April 1954, Portsmouth Case File, box 1.

debate over the litigants' racial "appearances." By failing to address the eugenic underpinnings of the racial classifications, Carliner left open the loophole through which the state, and the miscegenation law, would escape.

The *amicus curiae* brief filed by Attorney General J. Lindsay Almond, Jr. made short work of Carliner's overwrought jurisdictional argument. In answer to Carliner's challenge to the jurisdiction of the Portsmouth Circuit Court, Almond relied on the state Constitution. "*Jurisdiction emanates from the Legislature*. . . . the power of a court to hear and determine a particular type of controversy and to award a specific mode of relief is entirely a matter of legislative grant." ⁸⁵ For Almond, the first assignment of error was "but another aspect of that framed in the second [error]." If the Virginia statute was unconstitutional, then there was no way that the legislature could grant the courts any power: legislative constitutionality preceded legal jurisdiction.

Assuming that the case rested solely on its Fourteenth Amendment challenge, the state proceeded to summarize the appellate rulings—both Virginia and federal—on miscegenation. The state cited *Pace v. Alabama* as "the only case to our knowledge where the Supreme Court of the United States has ruled on an anti-miscegenation statute since the Fourteenth Amendment was ratified." While this was technically correct, in *Pace* the Court ruled on interracial fornication *not* intermarriage. Despite Carliner's argument that, "the power of a state to punish adultery and fornication between persons of different races stands on a different footing than any asserted power to prohibit interracial marriages. The right to marry is admittedly a fundamental liberty; a right to fornicate is not,"⁸⁶ the state asserted that, "the Supreme Court of the United States has approved anti-miscegenation

⁸⁵ Attorney General, "Brief of the Commonwealth of Virginia Amicus Curiae," in *Records and Briefs*, 197 Virginia Reports 69, 5 [emphasis in the original].

⁸⁶ Carliner, "Reply Brief," in *Records and Briefs*, 197 Virginia Reports 69, 9.

statutes."⁸⁷ The state asserted that, "though miscegenation statutes have been persistently attacked on the ground that they violate the Federal Constitution, they have been universally upheld as a proper exercise of the power of each state to control its own citizens."⁸⁸ The state squeezed through the eugenically supported, police-power loophole.

When *Naim* arrived before the Virginia Supreme Court of Appeals, 29 states maintained miscegenation laws.⁸⁹ The sole precedent for the unconstitutionality of a miscegenation statute came in *Perez v. Sharp sub. nom. Lippold*,⁹⁰ a four-to-three ruling by the California Supreme Court in 1948 overturning California's miscegenation statute. Virginia sought to distinguish between *Naim v. Naim* and *Perez v. Sharp*. In *Perez*, the California court held that because California recognized miscegenous marriages performed in states where such marriages were legal, "it follows that [miscegenous] marriage cannot be considered vitally detrimental to the public health, welfare and morals." Furthermore, the California court held that the California statute was "entirely declaratory, while all others carry with them penalties for violation." The court concluded that the absence of a penalty revealed ambivalence, "an attitude of comparative indifference on the part of the Legislature, and the absence of any clearly expressed public sentiment or policy."⁹¹ Virginia's attorney general argued that the Racial Integrity Act left no such ambiguities regarding penalties. Nor, he claimed, did Virginia lack clear public sentiment against miscegenation. Furthermore, the state raised the eugenic shield by contending that the

⁸⁷Attorney General, "Amicus Curiae," in *Records and Briefs*, 197 Virginia Reports 69, 13.

⁸⁸Attorney General, *Ibid.*, 16.

⁸⁹See note 20, above.

⁹⁰*Perez v. Sharp sub nom. Lippold*, 198 P. 2d 17 (1948), 17-47.

⁹¹*Perez v. Sharp sub nom. Lippold*, *Ibid.*, 31, 33.

determining question in *Perez*, the reasonableness of racial classifications, was not present in *Naim v. Naim*.⁹²

According to the state, the balance between the legislative power and the judicial power depended upon the discretion the judiciary used in reviewing legislation. The state asserted that, "the courts themselves have developed certain well established constitutional principles designed to preserve the appropriate balance between the legislative and judicial departments in such cases."⁹³ Since Carliner had presented no formal challenge to the reasonableness of eugenic classifications, and since restraint should govern judicial review, the state believed that the Supreme Court of Appeals should uphold Judge Kellam's ruling. Ultimately, for Carliner, the issue was not whether or not the classification was reasonable. Instead, it was whether or not the state had the power to make such racial classifications in the first place.⁹⁴

Citing *American Jurisprudence* as authority, the state reminded the court that:

when the classification in a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. Although the presumption in favor of a classification is not conclusive and is rebuttable, courts may not declare it invalid unless, *viewed in the light of facts made known or generally assumed*, it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators [emphasis in original].⁹⁵

Carliner needed, according to the state, to attack the underlying eugenical assumptions of the system of classification. Quoting again from *American Jurisprudence*, the state argued, "Invalid discrimination must be proved or admitted; it is not presumed. The courts need

⁹²Neither the state, nor ultimately the court, accepted Carliner's argument in the "Reply Brief" that, since the Supreme Court had termed racial distinctions "irrelevant, unjustified, inexcusable, and odious" the Court was in effect "saying that such classifications are arbitrary and unreasonable on their face," and that the state must bear the burden of demonstrating "a pressing public necessity . . . in order for the classifications to be considered reasonable." Carliner, "Reply Brief," in *Records and Briefs*, 197 Virginia Reports 69, 18.

⁹³Attorney General, "Amicus Curiae," in *Records and Briefs*, 197 Virginia Reports 69, 20.

⁹⁴Carliner, "Reply Brief," in *Records and Briefs*, 197 Virginia Reports 69, 12.

⁹⁵"Presumptions and Burden of Proof," section 521 in *American Jurisprudence* 12:214, quoted in Attorney General, "Amicus Curiae," in *Records and Briefs*, 197 Virginia Reports 69, 21.

not be ingenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism."⁹⁶ Since Carliner abandoned his challenges to racial classifications in the statement of fact, the court could accept eugenical classifications as a reasonable basis for the RIA—despite the fact that in 1952 the world's most prominent scientists had undermined the notion of race as a scientific category.⁹⁷ Thus, according to the state, while the California court in *Perez*, "concluded that the force of the presumption of constitutionality is vitiated or the entire presumption inapplicable in situations involving racial classifications, the majority did not indicate...that a regulation based upon racial distinctions is presumed to be *invalid*...."⁹⁸ In *Perez*, counsel did question the validity of racial classifications, thereby avoiding the difficulty presented by the rational basis test.

Perez battered down eugenic theory—reducing it in the eyes of the California jurists as a reasonable grounds for racial classification.⁹⁹ In *Naim*, "The entire appellate record in the case at bar...contains no transcript of any testimony offered at the trial level. Moreover, it does not appear that appellant raised the issue of the reasonableness of the classifications established by the Virginia anti-miscegenation law."¹⁰⁰ Carliner retained an approach emphasizing marriage as a basic right, and asserting that the RIA was unconstitutional on its face. "I don't think if I put it in a more discrete way, 'The classifications are inappropriate,' as if some other classification would be OK....I would think that an

⁹⁶*American Jurisprudence*, quoted in Attorney General, *Ibid.*, 21.

⁹⁷UNESCO, *The Race Concept*.

⁹⁸Attorney General, *Ibid.*, 26. On page 27, the state asserted that, "It was only after a full analysis of these authorities (biological, psychological [sic], sociological [sic], etc.) [presented against the statute] that a majority of the Court resolved that the classification was in fact arbitrary and that the regulation predicated upon it could not stand."

⁹⁹*Perez v. Sharp sub nom. Lippold*, 198 P. 2d 17 (1948), 17-29. In *Perez*, the logic of eugenics was undercut by direct anthropological and biological testimony calling into question the early eugenical assumptions of "race." *Perez* also cited the failure of *Skinner v. Oklahoma* 316 U.S. 535 (1941), a ruling that struck down an Oklahoma law allowing the punitive, eugenic sterilization of certain criminals, to question the validity of eugenics, pointing directly to Justice Jackson's musing about the propriety of "conducting biological experiments at the expense of the dignity and personality and natural powers of a minority." *Perez*, footnote 1.

¹⁰⁰Attorney General, "Amicus Curiae," in *Records and Briefs*, 197 Virginia Reports 69, 27.

unsatisfactory result."¹⁰¹ The state countered this assertion by contending that, since over one-half of the states (29) had antimiscegenation laws, the "reasonableness" of such laws seemed, to the state, established beyond doubt. If the statute was inherently unreasonable, no other states would have similar laws. The court, it turned out, agreed entirely.

Forty years later, David Carliner still became angry when he recounted his time before the Virginia Supreme Court of Appeals in 1955. "I recall very vividly—I can't recall any colloquies between myself and the Court—I was never treated with such hostility anywhere as I was by that Court. The fact this was a Chinese-white marriage didn't make any difference; they saw black all over the place. And they treated me as if I were a piece of shit. I was treated very badly."¹⁰² Not surprisingly, the ruling went against Carliner. The language of the ruling is highly evocative—a blend of militant state rights and eugenical theory. The tone of the opinion has everything to do with context. Whereas Kellam ruled the February before *Brown I*, the Virginia Supreme Court of Appeals ruled in the wake of *Brown II*, amidst the mounting furor over impending desegregation. Justice Buchanan, writing for the court, cribbed liberally from the state's *amicus curiae* brief, accepting its argument entirely.

First, Buchanan tellingly invoked *Plessy v. Ferguson* to establish the constitutionality of antimiscegenation law.¹⁰³ The court did not accept Carliner's argument that, in light of the *Brown* decision, the doctrine of separate but equal "has no applicability to a marriage. Train accommodations may be interchangeable, but spouses are not."¹⁰⁴ The court distinguished between social legislation and the rights the Fourteenth Amendment protected

¹⁰¹Carliner Interview, November 3, 1995.

¹⁰²Carliner Interview, November 3, 1995.

¹⁰³*Naim v. Naim*, 197 VA 80 (1955), 87. The court quotes *Plessy*: "Laws forbidding intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the state."

¹⁰⁴David Carliner, "Reply Brief," in *Records and Briefs*, 197 Virginia Reports 69, 9.

by citing two cases repugnant to southerners. Noting that *Brown* held segregation in schooling unconstitutional because education "[is] the very foundation of good citizenship," the court minced no words in distinguishing interracial marriage from desegregated education:

No such claim for the intermarriage of the races could be supported; by no sort of valid reasoning could it be found to be a foundation of good citizenship or a right which must be made available to all on equal terms. In the opinion of the legislature of more than half the states [the 29 states with active miscegenation laws] it is harmful to good citizenship.¹⁰⁵

Then, citing *Bolling v. Sharpe*, the court noted that, "Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective."¹⁰⁶ Stating that, "it is the considered opinion of more than half of the States of the Union that the prohibition against miscegenetic marriages is a proper governmental objective," the court established its belief in the reasonableness of eugenic racial classification.

Justice Buchanan's decision then adopted a self-consciously eugenical tone. Citing the U.S. Supreme Court's *Purity Extract* decision, Buchanan wrote, "It is also well established that, when a state exerting its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary to make its action effective."¹⁰⁷ As far as Buchanan was concerned, the decision in *Purity* stated the issue squarely: "The inquiry [by the court] must be whether, considering the ends in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat."¹⁰⁸ In the opinion of the Virginia court,

¹⁰⁵*Naim v. Naim*, 197 VA 80 (1955), 88.

¹⁰⁶*Bolling v. Sharpe*, 347 U.S. 497 (1954). *Bolling v. Sharpe* was decided alongside *Brown*; it declared segregation in District of Columbia schools unconstitutional.

¹⁰⁷*Purity Extract & Co. v. Lynch*, 226 U.S. 192 (1912).

¹⁰⁸*Ibid.*, quoted in *Naim v. Naim*, 197 VA 80 (1955), 89.

the RIA did not approach this level of caprice. The justice then chided Carliner in his approach to the case:

The only way by which the statute could be made effective was by classification of the races. If preservation of the racial integrity is legal [which the court had just asserted it was, under the police power], then racial classification to effect that end is not presumed to be arbitrary.

It does not appear from this record that the appellant questioned the reasonableness of the classification in the trial court. There is no evidence in the record suggesting that the classification made by the statute is unreasonable or that it is not reasonably related to the purpose intended to be accomplished. In the absence of all evidence to the contrary, the presumption of reasonableness is very strong.

The court seemed to indicate that Carliner's challenge might have been more substantial had he questioned racial classification directly.¹⁰⁹ While this is unlikely, given Carliner's recollection of the court's response to the case, the lack of such a challenge to the eugenical foundations of the RIA allowed the Virginia court to hide the Act behind the shield of legal doctrine.

Buchanan asserted that,

When the classification made by the legislature is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary.¹¹⁰

In failing to question the eugenical underpinnings of the RIA, a challenge that had succeeded in California, Carliner allowed the Virginia statute to be reaffirmed, continuing the precedent for eugenically motivated social control.¹¹¹

¹⁰⁹Recall that Carliner objected to the determination of race by visual and hear-say evidence during the Portsmouth trial, abandoning this objection on appeal, footnote 80 above. Nowhere did Carliner attack the rationale of racial classification: the theories that the races are indeed distinguishable and qualitatively different.

¹¹⁰*Borden's Farm Products Co. v. Baldwin*, 293 U.S. 194, quoted in *Naim v. Naim*, 197 VA 80 (1955), 89.

¹¹¹At a later stage of the trial when associate counsel Will Maslow suggested a direct assault on the eugenic rationale, "Carliner had deep reservation about the value of such [contra-eugenic] testimony by physical anthropologists. It would not only incur added expenses. . .but also invite counter testimony by state witnesses to the effect that the offspring of interracial marriage were unhappy and had difficulty adjusting to a hostile world." Sohn, "Principle and Expedience in Judicial Review," 90.

The tight interweaving of social and cultural issues with eugenical precepts is evinced by the concluding paragraphs of the Virginia Supreme Court of Appeals decision, which deserve to be quoted at length.

The institution of marriage has from time immemorial been considered a proper subject for State regulation in the interest of the public health, morals and welfare, to the end that family life, a relation basic and vital to the permanence of the State, may be maintained in accordance with established tradition and culture and in furtherance of the physical, moral and spiritual well-being of its citizens.

We are unable to read in the Fourteenth Amendment to the Constitution or in any other provision of that great document any words or intendment which prohibit the State from enacting legislation to preserve the racial integrity of its citizens, or which denies the power of the State to regulate the marriage relation so that it shall not have a mongrel breed of citizens. We find there no requirement that the State shall not legislate to prevent the obliteration of racial pride, but must permit the corruption of blood even though it weaken or destroy the quality of its citizenship. Both sacred and secular history teach that nations and races have better advanced in human progress when they cultivated their own distinctive characteristics and culture and developed their own peculiar genius.¹¹²

Buchanan struck the major chords of eugenic ideology, simultaneously upholding the cultural tradition of southern white supremacy. His appeal to unspecified teachings of history evokes Madison Grant, Lothrop Stoddard, and Earnest Sevier Cox's arguments for racial integrity and separation. Championing "racial integrity" and "racial pride" against the social and cultural solvent of "mongrelization" caused by "corruption of the blood," Buchanan used the eugenic metaphor to reiterate beliefs from an era before Hitlerian biological determinism. This is perhaps not surprising. Most of Justices on the Supreme Court of Appeals graduated from law school in the teens and twenties, just when eugenical thought in Virginia reached its apogee. One, Justice Lemuel Smith, actually voted for both the eugenic sterilization and the racial integrity acts as a member of the House of

¹¹²*Naim v. Naim*, 197 VA 80 (1955), 89-90.

Delegates.¹¹³ The Justices, much more than Carliner, would have been familiar with the history of the RIA.¹¹⁴

Justice Buchanan concluded the opinion with a fire-breathing finale,

Regulation of the marriage relation is, we think, distinctly one of the rights guaranteed to the States and safeguarded by that bastion of States' rights, somewhat battered perhaps but still a sturdy fortress in our fundamental law, the tenth section of the Bill of Rights, which declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."¹¹⁵

The court's self-conscious use of *Plessy*, *Brown I*, and *Bolling v. Sharpe* sent the message that Virginia would not accept civil-rights arguments without a direct attack against the eugenical basis of racial classifications. Although the federal courts seemed to be tending toward a view that privileged civil rights over state rights, David Carliner's approach came too soon, before Virginia's court was ready to view civil rights as somehow privileged over state sovereignty. The justices of the Virginia Supreme Court of Appeals used the shield of eugenic classification, buttressed by the Tenth Amendment, to ward off the threat posed by interpreting marriage as a protected civil-right. Carliner's final hope lay with the United States Supreme Court.

Between 8:15 and 8:45 a.m. on Sunday, November 6, 1955, Associate Justice Harold Hitz Burton took his morning constitutional. His ritualized walk was not unusual, but his

¹¹³Smith graduated from the University of Virginia in 1916 and lived in Charlottesville, home of John Powell and the university eugenicists. Ivey Foreman Lewis telegraphed Governor W. M. Tuck, "Urge favorable consideration of Judge Smith for supreme bench on basis of character, ability, experience and wide public esteem." Draft telegram, Ivey Foreman Lewis to Governor W. M. Tuck, October 16, 1947, Box 7, Dean's Papers 5119, Special Collections, Alderman Library, University of Virginia, Charlottesville. See also, *Journal of the House of Delegates of Virginia* (Richmond: Superintendent of Public Printing, 1924) 772, 774-775. *Acts of the General Assembly*, (Richmond: Superintendent of Public Printing, 1924), 834.

¹¹⁴The newspaper propaganda favoring the Racial Integrity Act was unprecedented. John Powell published an in-depth, thirteen-part editorial colloquium in eugenics under the title "The Last Stand" [against racial declension due to amalgamation] in the *Richmond Times-Dispatch*. See, Richard B. Sherman, "'The Last Stand': The Fight for Racial Integrity in Virginia in the 1920s," *Journal of Southern History* 54 (February 1988): 69-92.

¹¹⁵*Naim v. Naim*, 197 VA 80 (1955), 90.

notation of what he thought about during his half-hour of quiet cogitation was remarkable. In the diary entries during the United States Supreme Court's October 1955 term, Harold Burton rarely noted that he thought about cases pending before the Court. Burton spent this time, almost exclusively, thinking about various non-court related matters: speeches, articles, or revisions to his favorite piece, "The Unsung Duties of the Supreme Court." On November 6, 1955, however, Burton wrote simply, "(Miscegenation statute—Va case)."¹¹⁶ It is not surprising that Burton would be considering the disposition of this case. He understood how politically and socially treacherous the issue of interracial marriage was in the South. Thanks to Earnest Sevier Cox's *Unending Hate*, Burton had a good sense of the reactionary temper in Virginia.¹¹⁷ In the end, the court would face *Naim* twice. Burton would vote with the majority of the court to remand, and then to deny rather than decide, *Naim v. Naim*.

Burton's personal struggle mirrored that among all the justices. Memoranda and evidence from their docket books dispels the widely held impression that the Court's *per curiam* decisions in *Naim* reflected unanimity.¹¹⁸ Other documents and impressionistic evidence sketch out the outline of the debate, pointing to an intracourt, doctrinal conflict behind the decisions. In this battle, it appears that Justice Frankfurter, academic dean of the court, led the conservative charge. Justices Douglas, Black, and initially Warren,

¹¹⁶Harold Hitz Burton. Diaries (November 6, 1955). "Harold Hitz Burton Papers" Microfilm, Reel 4. Manuscripts Division, Madison Building, Library of Congress, Washington, D.C. [Hereinafter referred to as Burton Papers.]

¹¹⁷As noted above, Burton's files on "segregation" contain Cox's pamphlet. Burton Papers, box 405.

¹¹⁸For personal and historical accounts asserting that the entire Court sought to dodge the case, see note 4 above, and; Philip Elman, "The Solicitor Generals Office, Justice Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History Interview by Norman Silber," *Harvard Law Review* 100 (1987): 817-52.

sought to rally the activists in a classic confrontation over the scope of judicial review and Supreme Court procedure.¹¹⁹

Carliner believed the case was squarely put and, in the wake of *Brown I* and *Brown II*, a veritable cinch. Carliner later confessed his naiveté in believing the legal question so compelling because, "you never know for sure what the Justices are going to do. I guess a more intelligent way of doing it would be to frame your arguments to reach particular Justices."¹²⁰ Had Carliner done this, it becomes apparent from various sources that Justice Felix Frankfurter would have presented the hardest sell. The Court had avoided this issue just the year before when it denied *certiorari* to Linnie May Jackson.¹²¹ Gerald Gunther, in his biography of Learned Hand, notes that "Frankfurter twice successfully persuaded his colleagues on the Court to dismiss cases that raised the question of the constitutionality of the miscegenation laws," and remained particularly uncomfortable with the issues presented by the miscegenation cases.¹²² Memos from the Justices' clerks, Justice Frankfurter, and the docket-book votes themselves reveal something of the dimensions of the debate over *Naim v. Naim*.¹²³

¹¹⁹An excellent analysis of these doctrinal lines, and the tensions they created, appears in, G. Edward White, "The Evolution of Reasoned Elaboration: Jurisprudential Criticism and Social Change," *Virginia Law Review* 59 (1973): 279-302.

¹²⁰Carliner interview, November 3, 1995.

¹²¹*Jackson v. Alabama*, 348 U.S. 888 (1954). Wallenstein shows how the timing of Jackson's appeal to the Supreme Court, between *Brown I* and *Brown II*, first raised the Justices' fears that miscegenation cases would inflame the political environment in which they sought to implement *Brown*. Wallenstein, "Race, Marriage, and the Law of Freedom," 414-16.

¹²²Gerald Gunther, *Learned Hand: The Man and the Judge* (New York: Alfred A. Knopf, 1994), 667.

¹²³The Justices maintained standardized docket books in which they recorded the votes during conference regarding various cases, other notes, and the ultimate disposition of the case at each stage. Of the six Justices' papers available to the author (Black, Burton, Douglas, Frankfurter, Harlan, and Warren), only three contained the docket books (Burton, Douglas, and Warren) Papers of Harold H. Burton, Box 279; Papers of William O. Douglas, Box 1162; Papers of Earl Warren, Box 369. Black, Burton, Douglas, Frankfurter, and Warren's papers are maintained in Manuscript Division, Madison Building, Library of Congress, Washington, D.C. Justice Harlan's papers reside in the Seely G. Mudd Library, Princeton University, Princeton, New Jersey [Copies in possession of the author]. Hereinafter referred to by name.

Perhaps the best evidence regarding the issues surrounding *Naim v. Naim* exists in the legal briefs prepared for the Justices by their law clerks.¹²⁴ These briefs represent the first impressions the Justices may have had of the case. The clerks for Justices Burton, Harlan, and Warren remarked upon the poor political timing of the *Naim* case. "In view of the difficulties engendered by the segregation cases," Burton's clerk wrote, "it would be wise judicial policy to duck this question for a time."¹²⁵ In spite of these considerations, the clerks for Burton, Douglas, and Warren recommended that the Court note probable jurisdiction and set the case down for argument. Burton's clerk wrote, "If cert[iorari] were involved our course would be clear. But what to do here?" Because Virginia's highest court upheld the RIA against a constitutional challenge, "I don't think we can be honest and say that the claim is insubstantial. Consequently the appellant has tapped our obligatory jurisdiction."¹²⁶ Justice Harlan's clerk captured the crux of the debate, "The psychological factor of the difference between appeal and cert may be the difference here. How can you say there is no substantial federal question in this case?" Despite acknowledging this, Harlan's clerk recommended dismissal for lack of a substantial federal question.¹²⁷ Clearly, the Judiciary Act of 1925 makes such appeal obligatory on the

¹²⁴Four of the six Justices' papers contained copies of law clerk memoranda on *Naim*: Burton, Douglas, Harlan, and Warren.

¹²⁵AJM (law clerk) to Justice Harold H. Burton, 23 October 1955, Harold H. Burton Papers, box 283, 3. "I have serious doubts whether this question should be decided now, while the problem of enforcement of the segregation cases is still so active." LML (law clerk) to Justice John Marshall Harlan, undated, Harlan Papers, 1955 file. See note 136 below for the views of Justice Warren's clerk.

¹²⁶AJM (law clerk) to Burton, *Ibid.*, 3.

¹²⁷LML (law clerk) to Justice John Marshall Harlan, undated, Harlan Papers, 1955 file. Warren's clerk wrote, "I imagine that the denial [in *Jackson*] was based on a desire not to impede the effectuation of the Segregation decrees. If this were a cert. petition perhaps, one year later, the same considerations would govern. But this is an appeal. I do not see how the question can be said to be insubstantial, and that appears to be the only method available to avoid decision." SAS (law clerk) to Chief Justice Earl Warren, undated, Earl Warren Papers, box 4. See also, William A. Norris (law clerk) to Justice William O. Douglas, 24 October 1955, William O. Douglas Papers, box 1164.

Supreme Court.¹²⁸ While the Justices sought to avoid the case in order to "give the present fire [over *Brown*] a chance to die down,"¹²⁹ it appears that concerns over procedural precedents and judicial review also came to the fore in the intracourt debate.

Only one memorandum exists which portrays the views of a Justice as read to the Conference on November 4, 1955.¹³⁰ Felix Frankfurter's resistance to a latitudinarian view of judicial review is well established, yet as Gerald Gunther has stated, "despite [Frankfurter's] general avowal of a restrained position on judicial review. . . [he] was given to expediency, discretion, and manipulation in the interests of prudence and avoiding political attacks on the Court."¹³¹ As Gunther reveals, Frankfurter strained mightily to distinguish the miscegenation cases from *Brown*, all in an attempt to "undercut the claim that the Fourteenth Amendment should be read as an across-the-board prohibition of color

¹²⁸Many commentators have noted this fact, both at the time and since. Indeed, the Court's elision of the distinction between *certiorari* and appeal elicited commentary from both sides. See note 4, above.

¹²⁹AJM (law clerk) to Justice Harold H. Burton, 23 October 1955, Burton Papers, box 283.

¹³⁰Wallenstein attributes this memo to John Marshall Harlan because he found a copy of it among Harlan's papers in Princeton, New Jersey. See Wallenstein, "Race, Marriage, and the Law of Freedom," 418. I have located two additional copies of this memo, neither of which Wallenstein acknowledges, that when put in series establish Felix Frankfurter as the author. The shortest text, free of any editorial comment, resides in the Felix Frankfurter Papers, (Harvard Law School Edition), Reel 17, 588-90. Another copy has noted across the top, in Frankfurter's handwriting, "Read at Conference on Friday, Nov. 4/55 as my attitude toward No. 366, O.T. 1955 *Naim v. Naim*" [underlining in original]. Felix Frankfurter Papers, (Library of Congress Edition), Reel 139, 150-52. This copy also has the handwritten addenda discussed below. The third copy, that which Wallenstein found in Justice Harlan's papers, represents a final typewritten draft assimilating the addenda and the first draft. I believe, on the basis of the handwritten additions and the didactic tone, that the memo represents Frankfurter lecturing the court. He had the standing to do so: having been 25 years a law professor at Harvard and having served on the Court for 18 years at the time of *Naim*. Harlan had been on the court less than a year when *Naim* arrived, making such pronouncements by him ridiculous. Moreover, whenever Frankfurter discussed the "true functions of the court and the best way to discharge them," that is, maintaining the separation between politics and the law in judicial review, he displayed his in-depth knowledge of the court and former justices. The copy in Justice Harlan's file appears to be a final-draft copy of a memo Justice Frankfurter circulated to the others. This interpretation is entirely supported by Melvin Urofsky's work *Felix Frankfurter: Judicial Restraint and Individual Liberties* (Boston: Twayne Publishers, 1991). Urofsky details Frankfurter's restrained jurisprudence and notes his penchant for circulating written copies of his conference room opinions, his "academic deanship" of the court, his condescending attitude when addressing the brethren, and his desire to create allies with junior members of the court, particularly Harlan. Thus, it is not surprising that Harlan would have kept a copy of Frankfurter's memo when the other Justices discarded it. See Urofsky, *Felix Frankfurter*, 45-63; 102-03; 145.

¹³¹Gunther, *Learned Hand*, 668-669.

lines; since 'color' was not explicitly mentioned in the Fourteenth Amendment, consideration of the context of the classifications—marriage rather than education, for example—might be legitimate in equal-protection litigation."¹³² Thus, in his memo on *Naim*, Frankfurter cloaked his deep desires, for both judicial restraint and protecting the Court from political attack, in the moral necessity of defending *Brown*.

Frankfurter started by establishing his pedigree, "So far as I recall, this is the first time since I've been here that I am confronted with the task of resolving a conflict between moral and technical legal considerations." As the second most senior member, and the Court's most eminent constitutional scholar, such an assertion surely carried weight. Remarking that he would deny the question if it had arrived as a petition for *certiorari* "because due consideration of important public consequences is relevant to the exercise of discretion in passing on such petitions," he noted the procedural difficulty *Naim* presented because of its appellate status. "If it were the settled practice of the Court, since the Judiciary Act of 1925 came in force, that jurisdiction is to be taken as a matter of course where an appeal formally appears, I would bow to the inevitable." Frankfurter insisted, however, that such was not the Court's practice. "I have not made a count of it, but my impression is strong that numerically we do not take most of the cases which are formally

¹³²Gunther, *Learned Hand*, 669. In a heated memo to Justice Black in 1943, Frankfurter wrote of his scholarly fixation with the Fourteenth Amendment. In his opinion, as long as the due process clause was given more than a procedural content, "pour[ing] into the generality of the language substantive guarantees, it is to me inconceivable that any kind of definition of the substantive rights of the guaranty will not repeat in the future the history of the past, namely will according to the makeup of the Court give varying scope to the substantive rights that are protected. . . ." As a result, Frankfurter "spent practically my mature lifetime . . . in adding my feeble efforts toward maintaining a conscientious observance by the Court of what I conceive to be the very narrow scope of the Court's power to strike down political action." Justice Felix Frankfurter to Justice Hugo Black, 13 November 1943, Frankfurter Papers (Harvard Law School Edition), Reel 2, 1-2. Frankfurter, ironically, aligned himself with members of the legal community who undermined the Progressive impulse in American law, as outlined in Morton J. Horwitz, *The Transformation of American Politics 1870-1960*, 258-65. Gerald Gunther shows the degree to which Frankfurter convinced Learned Hand to accept a limited view of the meaning of the *Brown* decision. This narrow view became the foundation for Hand's (according to Horwitz) extreme version of judicial restraint later articulated in his Holmes Lectures. Horwitz, *Transformations II*, 264. See Gunther, *Learned Hand*, 666, 669-70.

appeals," Frankfurter wrote. "Indeed, so strong is this tendency that it has been frequently said, both at the Conference table and by learned commentators, that the Court's practice has assimilated appeals to certiorari."¹³³ Frankfurter explained that on occasion the Court had denied appeals, only to have the issue later reappear and be resolved, when the public mind had clarified a consensus position.¹³⁴ Frankfurter envisioned a similar course for *Naim*.

Frankfurter appealed for judicial restraint, invoking a number of his favorite rhetorical tropes:

I do not imply that the question in this case is obviously insubstantial. I do say that a Court containing Holmes, Brandeis, Hughes, Stone and Cardozo would only the other day have dismissed the appeal as such. And I further say that even as of today, considering the body of legislation involved, both North and South, and the reach of the problem, namely, divers assumptions by legislatures affecting the regulation of marriage, indicate such a momentum of history, deep feeling, moral and psychological presuppositions, that as of today one can say without wrenching his conscience that the issue has not reached that compelling demand for consideration which precludes refusal to consider it.¹³⁵

¹³³Memo, Frankfurter to Conference, 4 November 1955, Frankfurter Papers (Library of Congress Edition), Reel 139, 150.

¹³⁴Urofsky notes that, "More often than not, Frankfurter tried to get the Court to avoid deciding cases. Brandeis had once told him that sometimes the most important action the Court could take was to decide not to decide a case. . . . whenever an opportunity arose to decide a case on narrower procedural grounds, they should do so." Urofsky, *Felix Frankfurter*, 126.

¹³⁵Memo, Frankfurter to Conference, *Ibid.*, 151. See also note 139, above. This section is classic Frankfurter. In 1943 Frankfurter, after asserting that "for twenty years I was at work on what was to be as comprehensive and as scholarly a book on the Fourteenth Amendment," wrote, "When men who had such background and such relation to so-called property interests as did, for instance, Waite, Bradley, Moody, Holmes, Brandeis and Cardozo showed how scrupulously they did not write their private notions of policy into the Constitution. . . ." Memo, Felix Frankfurter to Hugo Black, November 13, 1943, Felix Frankfurter Papers (Harvard Law School Edition), Reel 2. In January of 1956, Frankfurter wrote Earl Warren, "And I had the very great good fortune, after 1911, of knowing the goings-on of the Court. . . thanks to the confidence reposed in me by Holmes and later Brandeis and, still later, Cardozo. It is my deepest conviction that if the Court were composed entirely of men equal to the most intellectually powerful and energetic of those in the past, say, Marshall, Story, Taney, Miller, Bradley, Holmes, Brandeis, Hughes, Cardozo. . . they could not do full justice to the problems. . . of cases. . . the Court must [now] adjudicate." Memo, Felix Frankfurter to Chief Justice Earl Warren, January 26, 1956, Felix Frankfurter Papers (Harvard Law School Edition), Reel 4.

Frankfurter strained toward the presumption that the Racial Integrity Act had a rational basis.¹³⁶ This statement accorded with Frankfurter's established desire for judicial restraint respecting political issues. In his view, the lack of public desire to change the situation through the legislative process further disqualified the Court from adjudicating the matter. The Court's job did not include "judicial legislation," and his limited view of the applicability of the *Brown* decision reinforced his reluctance to have the Court decide the volatile issue of racial intermarriage.¹³⁷ Frankfurter closed his memo with a handwritten addendum indicating that he felt the main issue in the case was not presented "free from subsidiary or preliminary questions."¹³⁸ While this phrase may have been an oblique reference to Carliner's call for facial unconstitutionality, it foreshadowed the form the Court's first decision regarding the case would take.

The Justices first discussed *Naim* in conference on November 4, 1955. On the initial vote regarding *Naim*, the Court split: Harlan, Minton, Clark, Burton, and Frankfurter to

¹³⁶It is difficult to know where Frankfurter himself stood on eugenics. Examining his surviving 1927 correspondence with Justice Holmes, when Holmes delivered his famous opinion in the eugenical sterilization case *Buck v. Bell* 274 U.S. 200 (1927), reveals tantalizing clues. Preparing the opinion for *Buck*, Holmes wrote to Frankfurter, "I am glad that you like old Malthus, or at least to infer that you do." Holmes, a Neo-Malthusian, was an advocate of eugenic population control. When Holmes wrote, "I think my cases this term have been of rather a high average of interest e.g., the Virginia Sterilizing Act," inviting Frankfurter to comment on *Buck*, Frankfurter deferred, praising Holmes's other pithy 1927 opinions but studiously avoiding Holmes's "three generations of imbeciles are enough" epigram. Frankfurter's apparent silence regarding *Buck* stems from at least two factors: Frankfurter was engrossed, at the time, by the Sacco-Vanzetti appeal; and, Frankfurter removed many of his letters from Holmes's files shortly after Holmes died. See Robert M. Mennel and Christine L. Compston, eds. *Holmes and Frankfurter: Their Correspondence, 1912-1934* (Hanover: University Press of New England, 1996) xix-xx, 210, 212-213.

¹³⁷Frankfurter, extolling the jurisprudence of Justice Holmes, wrote, "Justices of the Court are not architects of policy. They can nullify the policy of others; they are incapable of fashioning their own solutions for social problems," and, "For it is subtle business to decide, not whether legislation is wise, but whether legislators were reasonable in believing it to be wise." Felix Frankfurter, *Mr. Justice Holmes and the Supreme Court* (Cambridge: Belknap Press, 1961) 56, 60. In a similarly restrained vein, Frankfurter felt that *Brown* was limited to education; every other case involving racial classifications needed to be judged independently by its own test. In a letter to Learned Hand, Frankfurter wrote, "But for the love of Mike don't say anything that lawyers and the cynical, unscrupulous Bill [Justice William O. Douglas] can quote as the clear view of the greatest living judge that the Segregation decision covers miscegenation!!" Quoted in Gunther, *Learned Hand*, 670.

¹³⁸Memo, Felix Frankfurter to Conference, 4 November 1955, Frankfurter Papers (Library of Congress Edition) Reel 139, 152. This addendum is in typescript on the final draft in the Harlan papers.

dismiss, Douglas, Reed, Black, and Warren to note probable jurisdiction and accept the case.¹³⁹ The Court took the rare action of voting to hold the case over for one week, so that the Justices could give it fuller consideration.¹⁴⁰ The significance of this action should not go unnoticed. The Court itself, in *Maryland v. Baltimore Radio Show*¹⁴¹ had stated that denial for *certiorari* merely meant that "fewer than four members of the Court thought it should be granted." Here on an appeal, obligating the Court according to traditional constructions of the Judiciary Act of 1925, the Court still hesitated and split five-four.

One week later, on 11 November 1955, the Court voted again. The Justices' docket books indicate that the initial split was identical to the vote on 4 November. Something, however, broke the five-to-four split among the Court. It is apparent from the docket books that Justices Reed and Warren joined the five who voted to dismiss the case; the seven then decided to vacate the lower court's decision. This new seven-to-two division carried the day. Why the Justices decided to remand the case rather than simply dismiss it remains unclear. Supplemental memos indicate that Justice Burton "suggested the possibility of an independent state ground," related to the state's right to recognize selected marriages, validating Virginia's decision. Instead of adopting Burton's strategy for

¹³⁹This split roughly parallels the vote over *certiorari* in the *Jackson* case the preceding term. Then, the court split Douglas, Black, and Warren to grant, Minton, Clark, Burton, Frankfurter, and Reed to deny. The ailing Justice Jackson did not vote. It is interesting to note that, at least initially in *Naim*, Reed voted with those seeking to hear argument. For the vote on *Jackson* see cover sheet to Memo, Harvey M. Grossman (law clerk) to Justice William O. Douglas, William O. Douglas papers, Box 1156.

¹⁴⁰While no systematic effort was made to quantify exactly how many cases the court held over for reconsideration, the impression one gets is that it occurred only rarely. The sheer volume of work facing the court required speedy, almost ruthless, determination of whether or not to hear the case.

¹⁴¹*Maryland v. Baltimore Radio Show*, 338 U.S. 912 (1950), 919. The Court stated, "Inasmuch, therefore, as all that a denial of a petition for writ of certiorari means is that fewer than four members of the Court thought that it should be granted, this Court has rigorously insisted that such a denial carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review. The Court has said this again and again; again and again the admonition has to be repeated." Despite this statement, the Supreme Court's failure to take up *Naim* was regarded as tacit acceptance of the doctrine. See the Virginia Supreme Court of Appeals' decision in *Loving v. Virginia* 206 VA 924 (1966), 927.

disposing of the case, it appears the court borrowed from Frankfurter's initial inspiration regarding the clarity of issues presented.

The court issued its *per curiam* decision, returning the case to the Virginia Supreme Court of Appeals, stating that the record was inadequate "as to the relationship of the parties to the Commonwealth of Virginia at the time of the marriage in North Carolina and upon their return to Virginia. . . ." This inadequacy resulted from "the failure of the parties to bring here all questions relevant to the disposition of the case," thereby preventing the constitutional issue regarding the RIA's validity from, "being considered in clean cut and concrete form, unclouded by such problems."¹⁴² The decision's language recast Justice Frankfurter's concerns over "subsidiary and preliminary questions" expressed in his initial memo to the conference. The Court directed Virginia's high court to return the case to the Circuit Court of Portsmouth for further clarification.

Justice Warren's docket book bears two handwritten notes regarding this decision, "Vacated. Hugo would note + hear argument," and, "Hugo and W.O. Douglas dissent."¹⁴³ As initially printed for the Justices, the memorandum decision indicated that "Mr. Justice Black, being of the opinion that this record properly presents a question arising under the United States Constitution, would note jurisdiction and set the case for arguments on that question."¹⁴⁴ Attached to Douglas's copy of this version is a note from his law clerk which may explain why Douglas did not note his dissent. Believing that clarifying the issues "should prove no obstacles to the parties and the state courts," he felt that, "the case probably will be back here in the near future. Under these circumstances, I would agree that this disposition of the case is not serious enough to note your vote. I

¹⁴²*Naim v. Naim*, 350 U.S. 891 (1955).

¹⁴³Earl Warren Papers, "Docket Book, No. 366 *Naim v. Naim*," box 369.

¹⁴⁴This version of the decision appears in a number of the Justices' papers, see, for instance, William O. Douglas Papers, "Legal Memoranda," box 1164, folder 350-399; Felix Frankfurter Papers, (Harvard Law School Edition) Reel 17, 591.

should think it would be more important to maintain a front of unanimity, for the present at least."¹⁴⁵ Perhaps Justice Douglas convinced Justice Black to withdraw his dissent, for it does not appear in the final printed decision.¹⁴⁶ Whether or not Frankfurter openly argued for just such a result is not clear, but it certainly would have assuaged his misgivings concerning the Court's appearing divided over adjudication under the Fourteenth Amendment.¹⁴⁷

Upon receiving *Naim* from the Supreme Court, the Virginia Supreme Court of Appeals issued a memorandum decision of its own. In its new ruling, Virginia's high court declared that the record was clear enough for itself and the Portsmouth court. Therefore, "The decree of the trial court and the decree of this court affirming it have become final so far as these courts are concerned." As there existed "no provision either under the rules of practice and procedure of this court or under the statute law of this Commonwealth by which this court may send the cause back to the Circuit Court with directions to re-open the cause so decided," and it would "be contrary to our fixed rules of practice and procedure . . . and our statute law," the Supreme Court of Appeals adhered to its original decision.¹⁴⁸

In effect, the Virginia Supreme Court of Appeals "nullified" the order of the United States Supreme Court. Newspapers across Virginia trumpeted the action as the first step in the realization of an "Ordinance of Interposition," legislation Virginia had just passed protesting and vowing to resist the desegregation action mandated by *Brown*.¹⁴⁹

¹⁴⁵William A. Norris (law clerk) to Justice Douglas, undated memo, Douglas Papers, Ibid.

¹⁴⁶*Naim v. Naim*, 350 U.S. 891 (1955). Nothing remains indicating the grounds of Black's decision.

¹⁴⁷Many commentators have remarked upon the consensus forged for *Brown I*, alternatively attributing it to Chief Justice Warren or Frankfurter. Frankfurter considered the appearance of unanimity crucially important regarding *Brown* and the miscegenation cases. For a balanced appraisal see, Urofsky, *Felix Frankfurter*, 137-142.

¹⁴⁸*Naim v. Naim*, 197 VA 734 (1956), 735.

¹⁴⁹The Virginia legislature based the ordinance upon James Madison's doctrine of "interposition," which had been most fully articulated by John C. Calhoun during the Nullification Crisis of 1831-1832. See particularly the editorial "'The Measure of Redress,'" *Richmond News Leader*, 19 January 1956, 14. "Yesterday the Virginia Supreme Court of Appeals, in an admirable action, interposed against the Supreme Court of the United States in a miscegenation case." See also the banner-headline article "Virginia Rejects

Recognizing Virginia's refusal as an affront to constitutional law, David Carliner filed a "Motion to Recall the Mandate and the Set the Case down for Oral Argument on the Merits, or in the Alternative, to Recall and Amend Mandate."¹⁵⁰ In the motion, Carliner noted that, "This represents the third time in its history that the Supreme Court of Appeals has failed to comply with a mandate of the United States Supreme Court."¹⁵¹ In an act of legal eugenics, Carliner felt that three generations of refusal were enough. In light of the Virginia court's open revolt, Carliner believed that the Supreme Court had to take the case or lose its position as the court of last resort.

The law clerks for Justices Douglas and Warren echoed Carliner's reaction. William A. Norris advised Justice Douglas against vacating the state judgment summarily because, "this would be intemperate and would unnecessarily increase the friction between this Court and the southern state courts. We are leading from a position of recognized strength; we can afford to be humble and gentle on occasion."¹⁵² Norris instead recommended that the Court note probable jurisdiction, because "the record is adequate to decide the constitutional question presented. For this reason I find the action of the Virginia Court of Appeals on remand as not surprising....It will begin to look obvious if the case is not taken that the Court is trying to run away from its obligation to decide the case."¹⁵³ Warren's clerk reacted to the Virginia ruling in similar fashion writing, "I recommend that the

Order of U.S. Supreme Court," *Richmond News Leader*, 18 January 1956, 1; "Virginia Bench Rejects Supreme Court's Order," *Norfolk Virginian-Pilot*, 19 January 1956, 1; "State's High Court Spurns U.S. Order," *Richmond Times-Dispatch*, 19 January 1956, 1.

¹⁵⁰The only copy available of this seven page motion resides in the Portsmouth case file, and it is missing page 6. The motion apparently was not deemed important enough to publish in the Supreme Court's bound issues of *Pleadings and Briefs*.

¹⁵¹Carliner, "Motion to Recall Mandate and to Set Case Down for Oral Argument on the Merits, or in the Alternative, to Recall and Amend Mandate," Portsmouth Case File, box 2, 2. The other two instances of Virginia intransigence were *Martin v. Hunter's Lessee* 1 Wheat. 304 (1816), and *Williams v. Bruffey*, 102 U.S. 248 (1880).

¹⁵²William A. Norris (law clerk) to Justice William O. Douglas, 1 March 1956, William O. Douglas Papers, box 1164.

¹⁵³William A. Norris (law clerk) to Justice William O. Douglas, *Ibid*.

mandate be recalled and probable jurisdiction noted. This would be somewhat inconsistent with the remand, which stated that the incomplete record 'prevents' unclouded consideration here....Perhaps adequate answer to any assertion of inconsistency is Emerson's famous: 'Foolish consistency is the hob-goblin of little minds.'¹⁵⁴ Indeed, in his very first brief, Burton's clerk made the same assertion, "it is very doubtful that the issue is rendered less substantial by the absence of a record on the reasonableness of the legislation."¹⁵⁵ For all Virginia's insistence regarding the necessity of challenging the classifications' reasonableness, at the federal level, the constitutional issue seemed clearly and squarely put. Virginia's defiant high court challenged the Supreme Court to step up and take the case.

There exists at least one other contemporaneous memo revealing Justice Frankfurter's desire to limit the Court's power of review.¹⁵⁶ Although Frankfurter set out to write the Chief Justice about his views on "two FLSA [Fair Labor Standards Act] cases," given its sweeping language and its context, the memo illustrates Frankfurter's reliance on the rational basis test and his inability to distinguish between economic matters and civil liberties legislation. Despite his reliance on the Court's ancient Nestors—Brandeis and Holmes—Frankfurter's memo reveals a flaw commented upon by Melvin Urofsky: "[Holmes and Brandeis] believed that courts should defer to the legislative will in reviewing economic policies but should play a different role when legislatures attempt to restrict individual liberties. Frankfurter never saw this distinction, and his inability to do so may have been at the heart of his failure."¹⁵⁷ Written just a week after the Virginia Supreme Court of Appeals rejected the Court's November decision in *Naim*, Frankfurter

¹⁵⁴SAS to Chief Justice Earl Warren, undated, Earl Warren Papers, box 369.

¹⁵⁵AJM to Justice Harold Hitz Burton, 23 October 1955, Harold Hitz Burton Papers, box 283, 3.

¹⁵⁶Memo, Felix Frankfurter to Chief Justice Earl Warren, 26 January 1956, Frankfurter Papers (Harvard University Edition), Reel 4. All quotations in this and the following paragraph are from this memo unless otherwise noted.

¹⁵⁷Urofsky, *Felix Frankfurter*, xi.

declared his stance on what types of cases the court should and should not hear. "You have noticed, of course, that I am, in the main, alert against taking cases except those that obviously call for determination by this Court. By 'obviously' I mean cases about which there can hardly be a difference of opinion around the table." Clearly, *Naim v. Naim* would not fall into this category.

After establishing his credentials—25 years teaching law at Harvard, being confidant to Holmes, Brandeis, and Cardozo—Frankfurter stated that even the most brilliant jurists "could not do full justice to the problems raised by the range and volume of cases now coming before the Court," if there existed no way to limit cases accepted. With this overcrowding in mind, Frankfurter asserted that, "This means, as the court has said again and again and again, that we ought not to take cases that really turn on evidence or appraisals of evidence, of issues of fact, broadly speaking." *Brown* and the *Naim* case fit Frankfurter's objectionable category. "Therefore the Court ought not to take cases where the interplay between the abstract scope of the statute and the circumstances to which it is applied, really constitute what is essentially a determination of fact or, at best, involves a nicety of judgment in the application of a statute." Once again, while Frankfurter directly referred to the Fair Labor Standards Act cases before Warren, his comments could quite as easily have been directed toward Fourteenth Amendment cases. Frankfurter's assurance that he would object to these types of cases appears to have been played out in the denouement to *Naim v. Naim*.

The votes recorded in the Justices' docket books tell this story. On March 2, 1956 the Justices polled themselves. The votes, as recorded in Harold Burton and William O. Douglas's docket books, indicate the court split six-to-three to deny, this time with William O. Douglas in the unlikely position as the swing vote. Harold Burton drew a line from

Douglas's vote to the comment, "(but would prefer NPJ [note probable jurisdiction])."¹⁵⁸

Naim seemed to have died. For some indeterminate reason, however, the Court again held the question over one week. On March 9, 1956, the Court split five-to-four, with Douglas resuming his position in favor of hearing the case. After five months and an impudent rebuff from Virginia's high court, the Supreme Court was back where it started: a standoff between Harlan, Minton, Clark, Burton, and Frankfurter against Douglas, Reed, Black, and Warren. Perhaps out of exhaustion, the Court opted to deny the motion on the grounds that the Virginia Supreme Court of Appeals' action, "leaves the case devoid of a properly presented federal question."¹⁵⁹ Despite a strongly worded dissent Warren had his clerk draft, the opinion went out as another *per curiam* decision, seeming to indicate unanimity among the brethren.¹⁶⁰ This decision struck the death knell for Carliner's appeal. *Naim v. Naim*, the first substantial constitutional challenge to the eugenic creed ensconced in Virginia's Racial Integrity Act, went out not with a bang but a barely audible whimper—smothered under the weight of infighting in the name of keeping the Court apolitical and a neutral arbiter of reasonable law. David Carliner would have to wait another decade to be vindicated.

* * * *

Justice Delayed: *Loving I, Calma v. Calma, Loving II*

Naim v. Naim set the precedent that allowed Virginia to continue to enforce the RIA for another 12 years. Two cases would make their way to Virginia's Supreme Court of Appeals in this time. In each instance, Virginia's high court would uphold the annulment

¹⁵⁸Docket Book, Harold Burton Papers, box 279.

¹⁵⁹*Naim v. Naim*, 350 U.S. 985 (1956)

¹⁶⁰"Since I regard the order of dismissal as completely impermissible in view of this Court's obligatory jurisdiction and its deeply rooted rules of decision, I am constrained to express my dissent." He concluded, "Wordsworth accurately called Duty the Stern Daughter of the voice of God. Here, sternness cannot make us shrink from her call. Congress has obliged this Court to decide the substantial constitutional questions which are properly and adequately presented in this appeal. I would NOTE PROBABLE JURISDICTION AND SET THE CASE DOWN FOR ARGUMENT." [emphasis in original] Earl Warren Papers, box 369.

of marriages. In both cases, lawyers and judges used mainline eugenic reasoning to defend the law and Virginia's culture of segregation. Eugenics enshrined in the law was on its last legs, however.

Three years after *Naim* ended, the RIA again received a public airing. Richard and Mildred Loving broke almost every ban in the RIA. Mildred Dolores Jeter, a black Virginian, attempted to avoid the RIA by marrying Richard Perry Loving, a white Virginian, in the District of Columbia in June of 1958. They then returned to Old Dominion and lived as man and wife. A grand jury indicted the Lovings for violating the RIA during the October 1958 Term of the Circuit Court of Caroline County, Virginia. On January 6, 1959, the Lovings pleaded guilty to violating the RIA, a criminal felony. The court imposed the maximum penalty, one year in jail. The trial judge, however, exercised his sentencing prerogative and suspended the jail term, "for a period of twenty-five years upon the provision that both accused leave...the state of Virginia at once and do not return together or at the same time...for a period of twenty-five years." In essence, the judge substituted banishment for imprisonment, and ratcheted Virginia's antimiscegenation statute back to its origins.¹⁶¹

The jurist who imposed this draconian sentence had a long personal involvement with Virginia's eugenics movement and the RIA specifically. Judge Leon M. Bazile had been assistant attorney general for Virginia when Judge Holt ruled on the *Atha Sorrels* case. He was willing to appeal Holt's decision, "but he thought the law was working well throughout the state, and that an appeal risked having the statute ruled unconstitutional."¹⁶² Despite his familiarity with the lobbying effort for the statute and the rhetoric of eugenics

¹⁶¹The penalty under Virginia's 1691 "act for suppressing outlying slaves" for a free white person marrying an African American was banishment. See Waddlington, *Loving*, 1191-92. The facts for this narrative are drawn from the opinions of the Virginia Supreme Court of Appeals, *Richard Perry Loving, et al. v. Commonwealth of Virginia* 206 Va. 924 (1966), and the United States Supreme Court, *Loving et lux. v. Virginia* 388 U.S. 1 (1967).

¹⁶²John Douglas Smith, "Managing White Supremacy: Politics and Culture in Virginia, 1919-1939" (Ph.D. diss., University of Virginia, 1998), 106.

that underpinned the law and framed its terms, Bazile relied on an older idiom when he wrote his opinion. "Almighty God," Bazile began, "created the races white, black, yellow, Malay, and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."¹⁶³ Bazile justified his actions by invoking a nineteenth-century religio-scientific explanation of racial difference.¹⁶⁴ Despite the virtually unanimous scientific belief in monogenesis by 1959, Bazile relied on his Christian culture and racial prejudice to adjudicate the case. Such would be Bazile's guiding principles each time he confronted the case.

As the Lovings served their banishment, another case, *Calma v. Calma*, came before the Virginia Supreme Court of Appeals. Rosina and Cezar Calma married on August 27, 1954 in Ingleside, New Jersey. Mr. Calma brought suit against his wife praying for divorce or annulment, claiming that she was "guilty of cruelty and constructive desertion," was still married to another man, and that the marriage violated the RIA. Mrs. Calma denied cruelty, desertion, and bigamy, and she denied that their marriage violated the RIA, she also failed to file for any claim against her husband. The commissioner in chancery determined the races of the Calmas and decreed the marriage void in law, under the aegis of the RIA.¹⁶⁵ The Circuit Court of Norfolk sustained the commissioner's report. This effectively split the parties but left the disposition of their material goods in limbo.

Rosina Calma then filed a bill for divorce or annulment before another commissioner in chancery. Ms. Calma alleged that she was a "white person" and that her husband was Filipino, and therefore not a white person under Virginia law. This commissioner, relying

¹⁶³Judge Leon Bazile quoted in 388 U.S. 1 (1967) at 3.

¹⁶⁴The notion of "zoögeography"—the geographic separation and the simultaneous creation of the different races—became popular in the mid-nineteenth century. See William Stanton, *The Leopard's Spots: Scientific Attitudes Toward Race in America, 1815–1859* (Chicago: The University of Chicago Press, 1960), 100–12.

¹⁶⁵The commissioner also found that, if the marriage could have been recognized as valid, the evidence exonerated Mrs. Calma of her husband's claims and he was not entitled to divorce.

on the RIA, ruled that "the marriage between the parties to this suit is one not recognized as a valid marriage in the Commonwealth of Virginia, being in violation of Section 20-54, Code of Virginia 1950 [the RIA]."¹⁶⁶ The circuit court approved this second report, and a stipulation between the parties that resolved their property rights and enjoined them from cohabiting in Virginia. This ruling again left Ms. Calma without alimony; a marriage not recognized as valid is void in law—it can be neither annulled or divorced, it simply does not exist. The Circuit Court of Norfolk simply followed the precedent, from neighboring Portsmouth, that Judge Kellam had set in *Naim*.

Ms. Calma then appealed the decision again, claiming that "the failure of the commissioner to recommend that she be granted a divorce, or in the alternative an annulment of the marriage, violated the rights guaranteed to her by the Constitution of the United States and the Constitution of Virginia."¹⁶⁷ The Virginia Supreme Court of Appeals still knew an easy case when it saw one. Both parties stipulated as to their race; therefore their marriage was indeed void. Since this had been determined in the very first hearing, the matter was "res judicata," and could not be relitigated for any reason. On December 3, 1962, the Supreme Court of Appeals affirmed the decision of the lower court. Ms. Calma received nothing further. This ruling set the stage for another confrontation between Judge Bazile and the Lovings.

On November 6, 1963, the Lovings filed a motion before Bazile, attempting to have their banishment rescinded, and the judgment against them set aside. They claimed that both measures violated the Fourteenth Amendment's protection of their civil rights. The court took its time deciding their fate; Bazile finally denied their motion on January 22,

¹⁶⁶Narrative details taken from *Calma v. Calma*, 128 S.E. 2d 440 (1962), 441. Unfortunately, a search for the records of this case revealed nothing. The Norfolk Circuit Court purged its files of cases it deemed insignificant many years ago.

¹⁶⁷*Ibid.*, 441.

1965.¹⁶⁸ The Lovings then appealed their case to the Virginia Supreme Court of Appeals in March 1966. Bernard S. Cohen and Philip J. Hirschkop represented the Lovings. In preparation for this appeal, they sought out David Carliner, both for advice and to study his approach to *Naim*. While Cohen and Hirschkop would appear before the highest courts of Virginia and United States, David Carliner remained in the background, listed "of counsel" on the briefs filed by Cohen and Hirschkop.

Cohen and Hirschkop took up *Loving* in a much different legal and social environment than that which confronted Carliner a decade earlier. Much had happened since 1956. The Supreme Court had struck down every other legal means of enforcing racial differentiation. Congress had enacted the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Although battles continued to be waged in the streets of southern cities between segregationists and civil rights workers, the brutality of Bull Connor and the antics of George Wallace had become a national embarrassment, even for many "moderate" whites who preferred segregation. The so-called "second reconstruction" seemed almost complete. All that remained were the miscegenation statutes. Cohen and Hirschkop realized that the time to strike had come.

Cohen and Hirschkop identified Carliner's error in *Naim*. Carliner, worried that introducing testimony regarding racial classifications would unduly muddy the legal issues, never directly attacked the scientific legitimation for racial classification. Cohen and Hirschkop struck for the weak underbelly of racial classification, its scientific basis.

The Virginia Supreme Court of Appeals made short work of Cohen and Hirschkop's arguments. Legally, the court relied on the logic and precedent set in *Naim*. "The defendants direct our attention to numerous federal decisions in the civil rights field in support of their claims that the *Naim* case should be reversed and that the statutes under

¹⁶⁸In the meantime, the Lovings had filed civil suit in the United States District Court for the Eastern District of Virginia. When Bazile denied the Lovings' motion, this court continued the case to allow the Lovings to appeal to Virginia's Supreme Court of Appeals. 388 U.S. 1 (1967) at 3.

consideration deny them due process of law and equal protection of the law," wrote Justice Carrico. "We have given consideration to these decisions," the Justice averred, "but it must be pointed out that none of them deals with miscegenation statutes or curtails a legal truth which has always been recognized—that there is an overriding state interest in the institution of marriage." Justice Carrico continued, citing the Supreme Court's decision in *Maynard v. Hill*, "Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the Legislature." The Virginia court expressed very definite opinions about Cohen and Hirschkop's direct attack on the science undergirding the RIA. "The defendants also refer us to a number of texts dealing with the sociological, biological and anthropological aspects of the question of interracial marriages to support their argument that the *Naim* decision is erroneous and that such marriages should not be forbidden by law," Carrico began. The court then unburdened itself with a scathing commentary on sociological jurisprudence. "A decision by this court reversing the *Naim* case upon consideration of the opinions of such text writers would be judicial legislation in the rawest sense of that term. Such arguments are properly addressable to the legislature, which enacted the law in the first place, and not to this court, whose prescribed role in the separated powers of government is to adjudicate, and not to legislate." The court would take no notice of new science. The iron grip forged by the combination of racist hatred and eugenic logic held fast.¹⁶⁹

Despite the fact that, in the years since *Naim* the number of states with miscegenation statutes dropped from 29 to 16, Carrington's opinion concluded, "Today, more than ten years since [the *Naim*] decision was handed down by this court, a number of states still have miscegenation statutes and yet there has been no new decision reflecting adversely upon the validity of such statutes." Ignoring that realizing the statutes were "unreasonable"

¹⁶⁹206 Va. 924 (1966), 929.

may have accounted for the reduction in their number, Carrington summarized, "We find no sound judicial reason, therefore, to depart from our holding in the *Naim* case."¹⁷⁰ As a partial sop to the Lovings, the court found that, "we do not agree with the [Loving's] contention that the sentences are void because they constitute banishment. We do agree...however, that the conditions of the suspensions are so unreasonable as to render the sentences void." So, the Supreme Court of Appeals vacated the sentences, and remanded the case to Judge Bazile with the suggestion that "The condition reasonably necessary to [keep the Lovings from violating the RIA] was that the defendants not again cohabit as man and wife in this state."¹⁷¹ So, the Lovings might return to Virginia, provided they remained segregated from each other. Segregation's science triumphed again.

The Virginia court's decision, fully expected by Cohen, Hirschkop, and Carliner, set the stage for David Carliner's final revenge over the bigotry espoused by Ivey Foreman Lewis and the mainline eugenicists. The United States Supreme Court accepted *Loving* on appeal without any debate over the propriety of ruling in such a case. Within the ranks of the brethren, too, great change had occurred since 1956. Most notably, Felix Frankfurter, the obstructionist jurist who saw in the Fourteenth Amendment no protection for personal civil rights, had retired in 1962.¹⁷² The court itself tended toward activist positions in regard to civil liberties and, with the exception of *Naim*, had ruled consistently to strike down laws infringing personal liberty on the basis of race. Outside the court, as noted above, thirteen states had voluntarily repealed their miscegenation statutes, deeming them repugnant to the Fourteenth Amendment or unenforceable. Apparently, the conventional wisdom viewed interracial marriage in a different light in 1967 than it did in 1956. The

¹⁷⁰*Ibid.*

¹⁷¹*Ibid.*, 931.

¹⁷²Not surprisingly, Frankfurter retired after noting his dissent in *Baker v. Carr*, the case that established the principle of "one man, one vote" and inhibited the gerrymandering of voting districts.

legal environment was prepared for a reconsidering the constitutionality of miscegenation statutes.

Rarely does a lawyer get a second chance to "win the big one." Losses are seldom as final as they are in a court of law, where the legal doctrine of *res judicata* often prevents the reconsideration of an issue once a court has ruled upon it. David Carliner, however, got just such a rare second chance with *Loving*. Although he never appeared before the Court, he aided Hirschkop and Cohen in preparing for the case. By reviewing Carliner's experience, both his strengths and his weaknesses, and remaining sensitive to the cultural and legal environment surrounding the issue of miscegenation, Cohen and Hirschkop would win *Loving* and reduce David Carliner's historic role to a footnote. In doing so, the victory in *Loving* contributed to the erasure of eugenics from the public consciousness.

Cohen and Hirschkop continued to challenge the scientific basis of the RIA before the Supreme Court. Now, it was Virginia's turn to make the legal miscalculation upon which the case turned. Hewing to the line of reasoning first elaborated in *Naim*, the state continued to assert that there was, indeed, a rational basis for the RIA. The Supreme Court, made aware of both the legislative and scientific history of the RIA, found this claim to be patently false. As in *Brown*, Chief Justice Warren wrote the opinion for a unanimous Court, again becoming the lightning rod for the reaction that followed.

The Court signaled its hostility to the RIA early in its opinion. Noting the long history of antimiscegenation law, the court noted that "the present statutory scheme dates from the adoption of the Racial Integrity Act of 1924, passed during the period of extreme nativism which followed the end of the First World War."¹⁷³ The reference to "extreme nativism" began chipping away the foundation of reasonableness by implying hysteria, not rationality. On the next page, Chief Justice Warren recalled the inflammatory language of *Naim*, quoting those passages most explicitly redolent with the eugenic metaphor—like "to

¹⁷³388 U.S. 1, at 6.

preserve the racial integrity of its citizens,' and to prevent 'the corruption of the blood,' 'a mongrel breed of citizens,' and 'the obliteration of racial pride,'"—and calling them "obviously an endorsement of the doctrine of White Supremacy."¹⁷⁴ Chief Justice Warren and the entire court saw through the fiction of eugenic "reasonableness" to the bigotry lying beneath.

Warren conceded the state's right to regulate marriage, but rejected the notion of "equal application"—contending that since the law applied equally to whites and blacks it was constitutional—and the "rational relationship" argument. Focusing on the rational relationship, and hence implicitly upon the purported rationality of eugenics, the chief justice distinguished two classes of legal cases: those involving "distinctions not drawn according to race" and those containing racial classifications. While in the former the state faced a limited responsibility in proving the rational relationship of the legislation to its end, in the latter cases, the state carried a "very heavy burden of justification" in light of the Fourteenth Amendment. Relying on the cases concerning the relocation and internment of Japanese citizens during World War II, Chief Justice Warren asserted that, "Over the years, this Court has consistently repudiated '[d]istinctions between citizens solely because of their ancestry' as being 'odious to a free people whose institutions are founded on the doctrine of equality.'"¹⁷⁵

Warren then mounted a scathing rebuke of Virginia as he systematically demolished the grounds beneath the RIA. "There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this [racial] classification," Warren began. Picking up on an aspect of the law that had been obvious to African Americans all along (notwithstanding Powell and Plecker's claim that the RIA protected all races equally),

¹⁷⁴Ibid., 7.

¹⁷⁵Ibid., 11. Here Warren quoted the decision in *Hirabayashi v. United States*, 320 U.S. 81 (1943), at 100. He also quoted from *Korematsu v. United States*, 323 U.S. 214 (1944), that racial classifications must "be subjected to the 'most rigid scrutiny,'" (216). Ironically, in both *Hirabayashi* and *Korematsu*, the Court upheld laws based on racial classifications.

Warren wrote, "The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy."¹⁷⁶ In a ringing denunciation, Warren affirmed, "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause."¹⁷⁷ Moving on to consider the due process aspect of the case, the chief justice wrote, "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival....To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law." Warren continued, "The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations." Paraphrasing David Carliner's contention that marriage "must rest with the law of natural selectivity," Warren averred that, "Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State. These convictions must be overturned." Eleven years later, David Carliner had his revenge.

The opinion never explicitly mentions eugenics, two aspects of the ruling crush the logic of eugenics as applied in law. In a footnote to his discussion of the RIA's white supremacist motivations, Warren noted that the court did not need to rule on Hirschkop and Cohen's contention that the statute was arbitrary and unreasonable because it only prevented white non-white marriages and not marriages between different non-white "races." Racial classification, Warren wrote, was "repugnant to the Fourteenth Amendment, even assuming an even-handed state purpose to protect the 'integrity' of all

¹⁷⁶388 U.S. 1, at 11.

¹⁷⁷*Ibid.*, 12.

racess."178 Eugenic racial purity had no place in American law, regardless of its rationality or evenhandedness. Warren's implicit critique of eugenics also cropped up when he cited *Skinner v. Oklahoma* 316 U.S. 535 (1942), in support of striking down the RIA on both equal protection and due process grounds.

Skinner, along with *Buck*, *Naim*, and *Loving* belongs to the rarefied family of eugenics case-law adjudicated by the Supreme Court. In 1942, the Court struck down Oklahoma's punitive sterilization law on the grounds that it punished equivalent classes of criminals differently because it mandated sterilization for certain types of felons and not others. Lobbied for, defended, and passed on eugenic grounds, the statute at issue in *Skinner* embodied both punitive and eugenic motivations for sterilization. Writing for the Court, Justice William O. Douglas, a noted liberal, never passed judgment on the validity of eugenics as a reasonable rationale or goal for police power action. Justice Robert Jackson, however, writing a concurring opinion, felt compelled to state, "There are limits to which a legislatively represented majority may conduct biological experiments at the expense of the dignity and personality and natural powers of a minority—even those who have been guilty of what the majority define as crimes." Sterilization, in its punitive, eugenic, or combined punitive-eugenic modes, seemed a questionable exercise of the state's police power. Despite these qualms, Jackson reserved judgment on this matter. A few years later, however, Jackson would confront the horror of Nazi eugenics run amok when he served as a prosecutor at the Nuremberg war crimes trials, learning by direct experience the prescience of his intuition.¹⁷⁹ As close as Justice Jackson came, his concurrence only helped overturn Oklahoma's criminal law; it would take *Loving* to undercut eugenic racial integrity. Even with these two supports knocked out, eugenic legal precedent remains standing, tottering on the basis of Mr. Justice Holmes's opinion in *Buck*—still the

¹⁷⁸Ibid., 11 note 11.

¹⁷⁹*Skinner v. Oklahoma*, 316 U.S. 535(1941), at 546–47.

controlling precedent after almost three-quarters of a century. The legacy of eugenic sterilization had not yet run its course.

* * * *

Punitive Sterilization in Virginia: Carrie Buck Meets the "Welfare Mother"

During the late 1950s and the 1960s, the eugenicists' fears shifted away from the menace of the feeble-minded and toward the so-called "population bomb."¹⁸⁰ The term "population bomb" and the metaphor of explosion for the rapid rate of population increase during the postwar decades gained widespread currency in America. In virtually every case, however, the precise terms used to describe this increase had a negative connotation for non-white and non-first-world countries. America experienced the positive "baby boom," invoking images of the nineteenth century land- or gold- rush, during the 1950s. As historian Daniel J. Kevles remarked, the Frederick Osborn and other leaders of the reform eugenics movement "found no cause for anxiety in the American statistics. They revealed that the middle and upper middle classes were contributing mightily to the baby boom, and that educated groups appeared to be reproducing at a rate sufficient to replace themselves."¹⁸¹ By contrast, demographers and sociologists described Indian, African, Far Eastern, and African-American populations as destructively "exploding" and threatening to jeopardize the world order by precipitating a Malthusian crisis. The language of the eugenic metaphor underwent a slight transformation, erasing its most overtly racist expressions, but continuing to emphasize a notion of inherent "fitness" and "unfitness."¹⁸²

¹⁸⁰One of the chief popularizers of this language and line of thought was Hugh Moore, the corporate magnate whose fortune rested upon Dixie Cups, ironically one of the sanitary improvements that led to the end of the common drinking cup and epidemic diseases that "checked" population. Moore facilitated the merger of his own Hugh Moore Fund, the Human Betterment Association, and Margaret Sanger's Planned Parenthood, to create the Planned Parenthood-World Population Council. Margaret Sanger appeared in public for the last time at the banquet celebrating this merger in May 1961. See Alan Chase, *The Legacy of Malthus: The Social Costs of the New Scientific Racism* (New York: Alfred A. Knopf, 1977), 382-85.

¹⁸¹Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (New York: Alfred A. Knopf, 1985), 258.

¹⁸²Alan Chase covers this transformation in Chapters 16 and 17.

The power of the eugenic metaphor in relation to childbirth and social support remained apparent within the halls of Virginia's General Assembly during the 1950s and 1960s. During the 1956, 1958, 1960, 1962 sessions of the General Assembly, state legislators considered bills advocating the compulsory sterilization of women receiving federal Aid to Families with Dependent Children (AFDC, also known as "welfare") funds who gave birth to children out of wedlock.¹⁸³ Theoretically, those in sympathy with these bills felt that parents, and particularly mothers, who gave birth to children when they lacked the financial means to support them, should be sterilized to prevent increasing the economic burden on society. Supporters initially advanced these bills without invoking eugenics as a rationale. The 1960 general assembly, however, did consider the possibility of the eugenic sterilization of "welfare mothers."

Representative E. Ralph James of Hampton, Virginia proposed the state's first punitive sterilization bill in 1956. House Bill 394 permitted the superintendent of public welfare in any county to petition the judge of the circuit or corporation court for that county to order "any woman who has given birth to more than one illegitimate child" to appear before the court and "show cause why she should not be sexually sterilized."¹⁸⁴ Thus the onus was on the mother to prove her right to remain fertile; a treble bind because these women would most likely be black, poor, and uneducated—ill equipped to resist the compulsion of authorities. During the 1958 legislature, Representative Purcell offered a revised version of the James bill, House Bill 718. Purcell added physician review and patient consent to the provision.¹⁸⁵ Although local authorities would still initiate the proceedings, judges were to decide the matter based upon the testimony of "two discreet and competent physicians." If

¹⁸³A wave of "punitive sterilization" laws swept America from the late-1950s through the mid-1960s. For a fine contemporaneous survey of these laws, see Julius Paul, "The Return of Punitive Sterilization Proposals: Current Attacks on Illegitimacy and the AFDC Program," *Law and Society Review* 3 (August 1968), 77–106.

¹⁸⁴*Ibid.*, 97; and House Bill 394, "A Bill to provide the sexual sterilization of females who give birth to certain illegitimate children...", *Virginia Bills, House* (1956).

¹⁸⁵House Bill 718, *Virginia Bills, House* (1958).

the judge ruled in favor of sterilization, the patient had to consent to the procedure. Seeing the practical difficulties this bill would encounter, legislators killed it in committee. James and Purcell's failed to pass; they did, however, prompt a number of Virginia bureaucracies to study the "illegitimacy problem."¹⁸⁶ These studies actually disputed the conventional wisdom, which grew from the eugenic notions that "like produces like" and illegitimacy and poverty go hand-in-hand, revealing that most families receiving AFDC funds did not have children born out of wedlock. Despite these findings, Virginians continued to wrangle over punitive sterilization. In 1959, the General Assembly's Commission to Study Problems Relating to Children Born Out of Wedlock presented a report that opposed compulsory sterilization, but advocated the enactment of a statute making it clearly legal to perform voluntary sterilization operations for nontherapeutic reasons. In each of the next two legislatures, both compulsory and voluntary sterilization measures would be offered for consideration.

The 1960 legislature confronted two sterilization bills and one eugenics bill. Senate Bill 169 provided for the voluntary sterilization of anyone above the age of majority (21) who requested the procedure and had the signed consent of their spouse. This bill also provided for the voluntary sterilization of minors upon the petition of their parents, provided the county court found that the "operation is in the best interests of such minor."¹⁸⁷ House Bill 494, sponsored by ten representatives, again advanced the 1958 modification of the James bill to sterilize welfare mothers.¹⁸⁸ Both the Senate and House Bills provided

¹⁸⁶Department of Welfare and Institutions of the Commonwealth of Virginia, "Report on Illegitimacy in the Aid to Dependent Children and Foster Care Programs (September 1958) and a companion study in 1961; and "State Summary of Illegitimate Children Receiving Aid to Dependent Children" (September 1958). The Department of Public Assistance, Social Service Bureau of the City of Richmond published two studies of its own: "A.D.C. is Everybody's Business" (September 1959) and "Illegitimacy in Richmond, Virginia, 1910-1955 (April 1957).

¹⁸⁷Senate Bill 169, *Virginia Bills, Senate* (1960). Senator Newton sponsored this bill.

¹⁸⁸House Bill 494, *Virginia Bills, House* (1960). Assemblymen Pennington, Richardson, Williams, Newton, Hutcherson, Philpott, Thompson, W. C. Dalton, Coyle, and Elliott proposed this bill.

immunity from legal liability for physicians and court officers who participated in the proceedings. Neither bill passed.

Perhaps knowing that House Bill 494 would meet with opposition, six members of the House, three of whom had sponsored House Bill 494, proffered House Bill 495.¹⁸⁹ This bill provided for an amendment to Virginia's eugenic sterilization law "providing for sexual sterilization of certain persons who are not inmates of institutions under control of the State Hospital Board" and "providing for local Eugenics Boards." This bill would create four-person local Eugenics Boards, whose members—the Commonwealth's Attorney, superintendent of the local board of public welfare, and two local physicians—would be appointed by the city or county court that had jurisdiction. The bill allowed superintendents of public welfare to petition the board for the sterilization of "patients," defined as any person "who is afflicted with a hereditary form of mental illness which is recurrent, mental deficiency, or epilepsy and who is not an inmate of any" state institution. In essence, this bill broadened eugenical sterilization to the entire population of Virginia. Now superintendents of state hospitals and superintendents of public welfare could initiate sterilization proceedings. This new statute sought to circumvent legislative reluctance to target welfare mothers. Understanding that the diagnosis "feeble-mindedness" allowed an earlier generation to control "antisocial" men and women, these legislators sought to provide the same control through the superintendents of welfare. Illegitimate births and poverty had been stigmata of feeble-mindedness before, there was no reason they could not be seen as signs of "mental deficiency" in 1960. The fact that these officials instituted the proceedings in both House Bill 494 and 495 underscores the conclusion that House Bill 495 sought to achieve precisely the same end as House Bill 494, only in the name of eugenics. The House referred both bills to the Committee for Courts of Justice, where the bills died.

¹⁸⁹Members Moxley, Giesen [female], Newton, Elliott, and Pennington sponsored this bill; Newton, Elliott, and Pennington signed on to both bills.

This flurry of legislation prompted the Senate to adopt a Joint Resolution "Directing the Virginia Advisory Legislative Council (VALC) to study the laws relating to sexual sterilization" then effective in Virginia. The language of the Joint Resolution reveals the degree to which eugenics had fallen out of favor by 1960. The resolution began by announcing that the "grounds for the compulsory sexual sterilization of persons" as directed by the 1924 sterilization act "do not appear to be in keeping with advances made in medical science" since 1924. The legislators then challenged the notion "that a person by the laws of heredity is the probable potential parent of socially inadequate offspring" by affirming that "a person may be afflicted with a mental illness which is not hereditary but which renders him or her incapable of assuming the responsibilities of parenthood." The Senate directed the VALC to review the sterilization law "in the light of knowledge most recently available to the medical profession in the fields of hereditary forms of mental illness, mental deficiency and epilepsy, and the treatment thereof." From this skeptical beginning, one might have expected radical change in the Virginia law.

The VALC selected an eleven-member committee to make this investigation, including "persons who have had experience in the operation of our present law permitting compulsory sterilization" and individuals who understood the problems facing voluntary sterilization. After acquainting itself with recent research regarding sterilization, and taking testimony for and against liberalizing the law for voluntary sterilization, the committee made two principal recommendations. First, "That no change be made in the present Virginia statute providing for the sexual sterilization of a patient in a mental institution," because, "There has been no substantial complaint concerning the operation of the statute in Virginia." The report noted, "During the 36 years in which it has been in effect, only 2826 males and 4146 females have been sterilized," implying that this number was so small as to be inconsequential. The report concluded "We are advised that there are no medical or other scientific data indicating that a change in the basis set out in the statute for sterilization

of inmates of institutions is either imperative or desirable."¹⁹⁰ The law sustained in *Buck v. Bell*, thirty-four years earlier, was sustained again, despite the "advances in medical science" that most subsequent scholars assumed would have, by 1960, invalidated the law in the eyes of reasonable people.

The VALC's second recommendation was for the adoption of a voluntary sterilization law, provided the person to be sterilized obtain the consent of their spouse if married. Voluntary sterilization remained a nettlesome issue nationwide, but especially in Virginia where, in 1952, a jury found in favor of a physician who sterilized a female patient without first obtaining her husband's written permission.¹⁹¹ In March of 1962, Virginia adopted a law which conformed to the VALC's recommendation regarding voluntary sterilization. This was the first voluntary sterilization law in American history; as in eugenic sterilization, Virginia led the way.¹⁹² Virginia's enactment of enabling legislation for voluntary sterilization was not without its own eugenic implications. Although these laws responded to the felt needs and vocal demands of many women, their liberatory function also had an unintended side effect—abuse of sterilization by physicians while the exact definition of "voluntary consent" remained murky. How voluntary are procedures consented to by a patients *advised* by their doctors that sterilization is in their own best interest? The door to sterilization abuse had been left open. As the *Relf* case from Alabama showed, that door allowed both otherwise scrupulous and unscrupulous physicians in a position of incredible power over their patients reproductive lives.

¹⁹⁰Virginia Advisory Legislative Council, "Sterilization Laws in Virginia," Senate Document No. 5 (1961), p. 5–7 in *Virginia Senate Documents, 1961*.

¹⁹¹Philip R. Reilly, *The Surgical Solution: A History of Involuntary Sterilization in the United States* (Baltimore and London: Johns Hopkins University Press, 1991), 144. From a legal standpoint, voluntary sterilization remained an enigmatic procedure in the 1960s. Physicians worried that operating on healthy reproductive organs at the whim of the patient would breach medical ethics, a significant irony given their lack of compunction in performing eugenic sterilizations. Physicians also feared lawsuits for illegally providing birth control information. In 1961, lobbying by the Virginia Medical Society and the Virginia Advisory Legislative Council succeeded in the enactment of a law protecting physicians from any liability in elective sterilization procedures, provided they were properly performed.

¹⁹²House Bill 300, *Virginia Bills, House* (1962). That same session the General Assembly killed yet another attempt at punitive sterilization of welfare mothers, Senate Bill 37, *Virginia Bills, Senate* (1962).

The *Washington Post* inadvertently uncovered the possibility of sterilization abuse in September of 1962. Running Gerald Grant's story "50 Indigent Mothers Sterilized in Fauquier County" and its follow-up, "Birth Control Clinic is 'Amazed' at Popularity of Sterilization," the *Post* ignited a controversy that involved religious, minority, government, and medical leaders in a week-long melee played out in the pages of the nation's newspapers.¹⁹³ Grant's first article recounted how twenty sociologists toured the facility and learned about the program at the behest of the Human Betterment Foundation.¹⁹⁴ Grant's second article reported that the sponsors of the Fauquier Hospital's birth control clinic, located in the then-bucolic northern Virginia farming community of Warrenton, were "'floored' by the intense interest [the sterilization program] has aroused among the Virginia County's medically indigent." Defining the "medically indigent" as those unable to pay hospital costs, Doctor H. W. Stinson revealed that sixty-three such women had been sterilized since 1960—two years before Virginia enacted its voluntary sterilization law.¹⁹⁵ According to Stinson, these 63 women were part of 201 total patients, 118 of whom were black. Stinson claimed that the women were sterilized only after a volunteer had explained "the entire range of contraceptive available to them," and after a 30 day waiting period if the patient chose sterilization. On the surface, the clinic seemed to be a model of informed consent and benign medical provision.¹⁹⁶

The *Post*'s article uncovered a number of alarming aspects to the hospital's program. The hospital began the clinic after lay volunteers suggested it. "One of the principal lay

¹⁹³Gerald Grant, "50 Indigent Mothers Sterilized In Fauquier County," *Washington Post*, September 4, 1962, B1; and Grant, "Birth Control Clinic Is 'Amazed' At Popularity of Sterilization," *Washington Post*, September 9, 1962, B1; and Andrew J. Glass, "Sterilization of 'Welfare Mothers': Report on Virginia Law in Action," *New York Herald Tribune*, September 9, 1962, p. 1 and 19.

¹⁹⁴Grant, "50 Indigent Mothers," B1. The Human Betterment Foundation traced its roots to California eugenicists Paul Popenoe and Ezra Gosney. Gosney founded the group in 1928. See Barry Alan Mehler, "A History of the American Eugenics Society: 1921 to 1940," (Ph.D. diss., University of Illinois at Urbana-Champaign, 1988), 357 and 417.

¹⁹⁵This made the operations extra-legal but not illegal; there was no statute outlawing voluntary sterilization. Interestingly, Stinson was the chief of radiology at the hospital. Yet, he wrote about the birth control clinic in the *Virginia Medical Monthly*.

¹⁹⁶All quotations from Grant, "Birth Control Clinic," B1.

workers" behind the contraception program, Mrs. James P. Mills, the *Post* reported, "heard the warden of Sing Sing Prison say that 95 per cent of his inmates were there because they were the eldest child of an overcrowded family" in 1937. The *Post's* reporter Gerald Grant immediately suspected eugenics. He asked if lay workers like Mrs. Mills helped indigent patients to decide for or against sterilization. "Oh, yes," Mrs. Mills replied, "My job is education, many of them have never heard of family planning." Grant then pushed Doctor Stinson on the directive or advisory nature of this counseling. Stinson replied that the hospital staff "isn't trying to sell anyone anything," claiming that "we educate them and let them make a choice. It's the same as an election," Stinson replied snidely, "would you deny anyone a vote?"¹⁹⁷ Stinson's comment is particularly telling, as the previous spring the United States Supreme Court had ruled in *Baker v. Carr* the famous "one man, one vote" case that continued to undermine the South's racist political structure. Grant asked Stinson directly about eugenics, and Stinson replied that "any effort to prevent the reproduction of certain character traits or to cut down welfare rolls was 'the furthest thing from our minds.'"¹⁹⁸ This answer did not satisfy many commentators, especially those who read hospital chief Dr. James L. Dellinger's comment, "We did lots to get the law passed. Let's face it, this sort of thing is not being done in urban centers because minority groups oppose it."¹⁹⁹

The report of the sterilization program led to an outcry from clerics, both for and against the sterilizations. Washington's Roman Catholic Archbishop Patrick A. O'Boyle predictably denounced the practice as "grossly immoral" and a "crudely selfish and materialistic" attempt to reduce the tax rate.²⁰⁰ A day later the Reverend Billy Graham weighed in for evangelical Protestants, warning, "We are in serious danger when we take

¹⁹⁷Ibid. Stinson told the *Herald Tribune's* reporter, "We're not selling it, they're asking for it." Glass, "Sterilization of 'Welfare Mothers', f19.

¹⁹⁸Ibid.

¹⁹⁹Dellinger quoted in Glass, "Sterilization of 'Welfare Mothers'," 1.

²⁰⁰Gerald Grant, "Archbishop Denounces Sterilization," September 10, 1962, A1.

on ourselves to sterilize women, even with their permission." In a veiled reference to the Nazis, Graham felt that the practice might be abused by "another ideology" and remarked, "It's a little bit like tampering with the press." Clergymen with ties to the organized eugenics movement, however, saw the matter differently. New York's famed Presbyterian Reverend Harry Emerson Fosdick, who had served on the advisory council of the American Eugenics Society from 1923 to 1935, affirmed that he "believed very much that there is a place for voluntary sterilization in our society." Reverend Joseph C. Fletcher, president of the board of directors of the Human Betterment Foundation, a eugenics organization founded in 1928, argued stridently in favor of the procedures.²⁰¹ Fletcher's attitude is not surprising: the Human Betterment Foundation aided the hospital "in the development of its surgical birth control method."²⁰² Methodist Bishop John Wesley Lord of Washington praised the program for providing a "beacon of hope and enlightenment" for "those thousands in our cities and rural areas who do not have the knowledge to keep from having more children than they can love, nurture and provide for."²⁰³

The women sterilized gave a generally positive response to white reporters, but according to the Nation of Islam's newspaper *Muhammad Speaks* many had second thoughts. Gerald Grant reported that a survey of 44 of the sterilized women resulted in only one "completely dissatisfied" response, and three who had complaints but were generally satisfied.²⁰⁴ The anti-white Nation of Islam's *Muhammad Speaks* reported about the "Birth Control Death Plan!" and "White Clinic Sterilizes More Negro Women!" The

²⁰¹Marshall Peck, "Sterilizing Plan Draws Protest of Billy Graham," *New York Herald Tribune*, September 11, 1962, p. 11.

²⁰²Gerald Grant, "The Fauquier Hospital Sterilization Story," *Background Reports* [of the National Conference of Christians and Jews] (January 1963), 1. Joseph Fletcher eventually joined the faculty of the University of Virginia, specializing in biomedical ethics, and served until the mid-1980s. Throughout his career, he hewed to the basic tenets of eugenics: that fit and unfit genes and people existed and the former should be encouraged to propagate while the latter should be eliminated.

²⁰³Lord quoted in "Sterilization Program Probe Asked," *Washington Post*, September 9, 1962, A9 (quotation); and "Capital Bishop Comes Out For Sterilizing Plan," *New York Herald Tribune*, September 12, 1962, p. 23.

²⁰⁴Grant, "The Fauquier County Sterilization Story," 3.

Honorable Elijah Muhammad, leader of the Nation of Islam, wrote, "I warn you my people and especially the women, be aware of the tricks the [white] devils are using to instill the idea of a false birth control in their clinics and hospitals."²⁰⁵ The fact that all the doctors in Fauquier county were white only exacerbated the racial tensions. Reporting the sterilization of 17-year-old Irene Pallot, the young mother of two, George Beatty and Quentin X built on the discrepancies between the clinic's public statements and actual practice. Noting that hospital administrator C. Robert Peery had written in *New Medical Materia* that the clinic required that patients be 21-years-old, have spousal consent, and the unwritten requirement that the woman have three or more children, Pallot's case seemed aberrant. She had never gone beyond the fifth grade, a "white woman doctor" asked her if she would not like to stop having children "at her age" implying that the process was temporary, and physicians obtained the consent of the girls poor and uneducated father. The glaring contrast pointed to the difficulties of "voluntary" sterilization among individuals who may have lacked education, remained deferential to authority, and whose poverty left them with only the clinic as a health care option. Although hospital officials vehemently denied "pressuring" mothers to agree to sterilization, or targeting black mothers in particular, the image left among the public was that this county hospital was indeed operating a "sterilization mill."

In his contemporary article, Julius Paul termed these bills "punitive noneugenic sterilization proposals" and "voluntary sterilization" bills. Yet he noted the eugenic history of sterilization and the fact that "arguments in favor of these proposals are couched in economic terms (the rising costs of welfare services), or 'moral' terms (the alarming rise in the rate of illegitimacy, especially among Negroes), and sometimes covertly or overtly on

²⁰⁵Elijah Muhammad, "Birth Control Death Plan!" *Muhammad Speaks* 2 (December 15, 1962), 1 and 8, quotation 1. The first five pages of this issue are devoted to articles scoring the Virginia clinic. Sub-headlines make connections between the clinic and a "plot" using the "Nazi formula for extinction," highlighting the connection these African Americans made between so-called voluntary sterilization and eugenic extermination.

racial grounds."²⁰⁶ Paul clearly sought to create too fine a distinction between these laws and the compulsory (eugenic) sterilization laws still on the books of twenty-seven states. A close search of the legislative record reveals just how closely aligned with eugenics these bills became. By 1962 the legislature debated Eugenics Boards as an alternative to the punitive sterilization bills.

Additionally, just as in the original efforts for sterilization legislation, proponents attempted to keep debates limited to "dispassionate" experts and legislators. The failure of these partisans to contain the debate doomed the punitive measures to legislative failure and attracted negative publicity to the voluntary measure as applied in Fauquier County. In the society at large, the hereditarian explanation for "illegitimacy" had completely lost its power. Experts in sociology and social work denied that "like begets like." These experts countered that illegitimate children tended to be born to poor mothers as a result of a complex congeries of causes, all of which indicated endemic environmental problems as the cause of pregnancy among unwed mothers. By 1962 this environmentalist orthodoxy was so well established that most observers saw these laws and programs for what they were: racially-driven efforts at social control. Eugenics had lost the day, despite the long memory of some legislators.

* * * *

The Old Guard Meets the New: Psychology and Biology Face the Past

The death throes of mainline eugenics remained powerful enough to convulse the intellectual community of the University of Virginia one final time. In the fall of 1957, the University of Virginia hired Virginia-born Henry E. Garrett, the emeritus chairman of Columbia University's psychology department, as a visiting professor. For the next seven years, Garrett would teach psychometrics through the education department. Garrett remained an influential, and somewhat notorious, psychometrician even in his late career.

²⁰⁶Paul, "The Rise of Punitive Sterilization, 78.

Most notably, he had joined the resurgence of hereditarian and racial psychometrics during the 1950s and 1960s. Although most scholars cite Arthur Jensen's 1969 article "How Much Can We Boost IQ and Scholastic Achievement?" as the starting point for a brief recrudescence of hereditarianism in the late 1960s and early 1970s, Henry Garrett had preceded Jensen in many respects.²⁰⁷ Garrett sealed his fame in 1954, when he testified on behalf of segregation before the United States District Court of Appeals for the Fourth Circuit in *Davis v. County School Board*. Garrett testified against his former students, Kenneth and Mamie Clark, whose famous "doll test" played a large role in convincing the Court that segregation damaged black self-esteem.²⁰⁸

Garrett's work, particularly his 1967 pamphlet "The Relative Intelligence of Whites and Negroes: The Armed Forces Tests," again claimed obvious racial disparities in intelligence. Using data from the Armed Forces Qualifications Test (AFQT), argued by many to be indicative of inborn intelligence, Garrett concluded, "The persistent and regular gap between Negroes and Whites in mental test performance strongly indicates significant differences in native ability. In short, the case for the genetic basis for White-Negro differences in intellectual capacity is as good as a scientific case can be."²⁰⁹ Garrett also supplied ammunition to the white supremacist Citizens Councils as they battled desegregation. Joining "The Relative Intelligence of Whites and Negroes" to three other

²⁰⁷Arthur Jensen, "How Much Can We Boost IQ and Scholastic Achievement?" *Harvard Educational Review* 39 (1969): 1-123. For a virtually complete bibliography of Jensen's racialist psychometry, see the bibliography in his latter-day disciples' book, Richard Herrnstein and Charles Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (New York: The Free Press, 1994), 800-01.

²⁰⁸Colgate Darden, a University of Virginia alumnus, University of Virginia president, and Virginia governor, also testified in favor of segregation in the *Davis* case. Although he championed segregation, Darden acquiesced in the Court's ruling, and subsequently sought to abide by desegregation and discourage massive resistance. The *Davis* case was brought by the NAACP against the Prince Edward County school board; it later was bundled with the other four cases that together comprised *Brown v. Board of Education*. In the "doll test" the Clarks presented black children with white and "black" dolls, recorded which one the children preferred, and then questioned them about why they preferred the doll they chose. The Clarks found that black children chose white dolls and ascribed positive characteristics to them, while they rejected black dolls and ascribed negative characteristics to them. From these results, the Clarks inferred that mainstream America's valorization of white norms for beauty, intelligence, and other positive social characteristics eroded black children's self-esteem. For a fine narrative of Garrett's involvement in the litigation leading to *Brown*, see Kluger, *Simple Justice*, 482-4; and 502-4.

²⁰⁹Garrett quoted in Chase, *Legacy of Malthus*, 447.

monographs—"How Classroom Desegregation Will Work," "Heredity: the Causes of Racial Differences in Intelligence," and "The Relative Intelligence of Whites and Negroes"—Garrett allowed the Patrick Henry Press of Richmond's Citizen Council to produce a pamphlet for circulation among segregationists.²¹⁰ A supporter of Carleton Putnam, the author of the controversial 1961 volume *Race and Reason: A Yankee View* which trotted out all the mainline eugenic arguments in favor of racial segregation, Garrett carried on an enduring correspondence with Jack Kilpatrick, reactionary editor of the *Richmond News-Leader*. Both men worked to get their segregationist and hereditarian ideas before the public at every opportunity. Garrett, in discussing an editorial written by Kilpatrick about cultural anthropologist Melville Herskovits, made a comment that revealed his elitism and anti-Semitism. "I was a graduate student with Herskovits," Garrett began, continuing, "I never liked him personally as I found him arrogant and ill-mannered. But I did admire his abilities which were fairly numerous. He has prostituted these to Boas and equalitarianism." Almost fifty years after Madison Grant leveled similar criticisms at Boas himself, Garrett was covering the same ground. Remarking on his work at the University of Virginia, Garrett quipped, "I have been vigorously attacked in the Cavalier [the university newspaper] and as vigorously defended. It pleases me that many of these young fellows are not sold on race mixing." Garrett continued solemnly, "I am still not optimistic as to the long run, but we must keep trying."²¹¹ For all the attention he garnered in the early 1960s, Garrett's effect on Virginia psychometrics long antedated this 1960s era racism and segregationism.

In 1958, the same year Ivey Foreman Lewis protested the integrationist tendencies in St. Paul's church, Professor Audrey M. Shuey of Randolph-Macon College published *The*

²¹⁰Alan Chase notes that these tracts were printed in massive numbers. His screed on classroom desegregation, for instance, went through two printings totaling 285,000 copies. *Ibid.*, 455.

²¹¹Henry E. Garrett to Jack Kilpatrick, March 13, 1962, "Personal Correspondence, 1950-1962" folder, Box 3, Kilpatrick Papers RG 6626-m, Special Collections, Alderman Library, University of Virginia, Charlottesville.

Testing of Negro Intelligence. This long review essay condensed "380 original investigations of Negro intelligence," from the prominent to the obscure—including the work of George Oscar Ferguson, Henry Garrett, and Carl C. Brigham. As one commentator noted, "Only the New York City telephone book contains more numbers than Professor Shuey's 521-page" book. Predictably, all this data led Shuey to conclude that, "all taken together, [the results of these investigations] inevitably point to the presence of native [genetic] differences between Negroes and whites as determined by intelligence tests."²¹² Despite the fact that Carl Brigham repudiated his racist findings in *A Study of American Intelligence* in 1930, Shuey cites his earlier conclusions frequently. Of Brigham's retraction, Shuey concluded, "Brigham later rejected completely his own and others' findings in the field of natio-racial differences in intelligence on the grounds that the subjects were handicapped by not having been brought up in homes where the vernacular of the test was used (or used exclusively) and that intelligence tests do not measure a unitary trait. As regards the latter point, *Garrett*, believes that Brigham attached too much importance to test purity."²¹³ Shuey's quotation of Garrett was not coincidental; she had been his student in graduate school at Columbia. Thus, the wheel turned full circle.

Henry Garrett and Audrey Shuey represented a dying gasp of hereditarianism in a state beset by what whites viewed as the catastrophe of desegregation. Although many whites, and many white Virginians particularly, believed these pronouncements as statements of scientific "fact," most psychologists and sociologists recognized them for what they were—completely unbalanced, biased statements that revealed more about Garrett and Shuey than about the realities of segregation. Kenneth and Mamie Clark's doll-tests would, in the fullness of time, also be completely discredited, revealing biases inherent in their approach to the problem. Both sides revealed the impact of social context on the scientific process. Nevertheless, despite brief resurgences in the late 1960s and the mid-

²¹²Chase on Shuey and Shuey quoted in Chase, *Legacy of Malthus*, 453.

²¹³Shuey quoted in *Ibid.*, 452.

1990s, hereditarian conclusions about racial intelligence—and the eugenic programs they supported—would not reclaim their controlling influence over science or social policy.

The eugenics tide turned in the University of Virginia's biology department as well. Taking over for Ivey Lewis in 1953, Professor Ladley Husted continued to teach relatively orthodox mainline eugenics. Husted, who had been taught by Lewis himself, appeared to focus more on his own research agenda than forwarding the eugenics creed. Orland E. White retired in 1957. He was replaced by Walter S. Flory, another University of Virginia graduate, and W. Ralph Singleton. Both men had made their scientific reputations in plant genetics. With the unleashing of atomic energy, post-war geneticists began to investigate the effects of radioactivity on genetic material. Extending the techniques in mutation studies pioneered by Thomas Hunt Morgan at Columbia, plant geneticists began irradiating samples with potent radioactivity emitted by Cobalt-30. The Blandy Experimental Farm built one of the strongest point-source radiation emitters in America, and pioneered in mutation research in crop genes.²¹⁴

At the same time, Flory and his successor Singleton adhered to the basic tenet of the eugenic creed: humanity could be improved by better breeding. Singleton, who had been educated at Harvard's Bussey Institution under Edward M. East and William E. Castle, remained committed to the notion of reform eugenics and the gradual improvement of humanity. As secretary of the American Genetics Association in 1962, Singleton accepted and promulgated a "History of the American Genetics Association," that made explicit statements regarding eugenics. "In the field of human race betterment," the history's section on eugenics began, "a solid foundation has been laid since 1903 on which a humane and democratic program may be developed." Apparently understanding the abuses that had occurred "in the name of eugenics," the association sought to distance itself from

²¹⁴This largely forgotten venture in genetics has yet to receive appropriate historical treatment. The Blandy Experimental Farm Papers, maintained by the University of Virginia, reveal the fascinating story of this facility and its now-forgotten national prominence.

the mainline orthodoxy. Eschewing the overtly racial rhetoric of the earlier generation, the history continued, "It is altogether clear that a rational program of eugenics means much more than wiping out or preventing the increase of outright mental and physical defect. It is essential, somehow, to encourage the reproduction of the most highly endowed."²¹⁵ Fifty years after the First International Congress on Eugenics, the American Genetics Society announced the same quest. Singleton, and the University of Virginia, continued in search of the eugenics grail.

* * * *

Although the Supreme Court's ruling in *Loving* buried the statutory support for mainline racist eugenics, scattered elements of the old eugenics elite would continue to rear their heads in Virginia. Moreover, the legacy of sterilization was still playing itself out on the bodies of Virginia's institutionalized population. It would take another fourteen years after *Loving* for Virginia to begin to confront its history of coercive sterilization and evaluate what it had done. Nevertheless, after passing the period of Massive Resistance and token desegregation, Virginia's eugenics experience once again approximated that of the country at large. The North and South had indeed converged in their scientific and social views. Now, main-line eugenicists populated the periphery of Virginia's academic and political arena and not its center. While eugenics would crop up from time to time, it no longer resonated with most Virginians' identity as either Americans or southerners. Over the course of two decades, eugenics slowly lost its momentum, and it drifted to the ragged margins of politics and science. Those who continued to profess mainline positions on race now looked like backward traditionalists, not apostles of the future as they had

²¹⁵American Genetics Association, "The American Genetics Association: A History of the Association," TMs, p. 3 in "American Genetics Association, 1962" Folder, Box A8-20D, Blandy Experimental Farm Papers RG 6/9/2.831, Special Collections, Alderman Library, University of Virginia, Charlottesville. The history continued, "It is also clear that a genetic analysis of human pedigrees may throw important new light on such problems as the causation of disease. Genetic resistances and susceptibilities are a primary factor in such wide-spread diseases as rheumatic fever and diabetes. Evidence was recently published in our *Journal [of Heredity]* that there is a recessive factor to phenylketonuria—which results in severe mental retardation (3–4)."

been viewed just twenty years earlier. The conflict between traditionalism and modernity had reached another turning point. All that remained to complete the repudiation of all the mainline eugenic traditions was for Virginia to confront the legacy of eugenic sterilization of the feeble-minded.

Conclusion: "I Never Knew What They'd Done With Me"

By the late sixties, the rise of the counterculture and the sexual revolution moved human sexuality temporarily beyond the purview of social engineers and into the realm of individual conscience. In Virginia, after the last attempts for a punitive sterilization law failed as part of the "Conservative Party" platform in late 1964, all that remained was the confrontation of the eugenic past. The "rediscovery" of eugenic sterilization would appear to end the history of eugenics and hereditarianism in Virginia. The near simultaneous founding of a department of medical ethics at the University of Virginia's School of Medicine seemed to promise that the abuses of the past would never happen again. The role the university played in advancing, defending, and sustaining those abuses was conveniently forgotten as a wave of self-righteous indignation washed clean the state's institutional conscience along with its memory. Even as medical ethicists at the University of Virginia demanded a presidential apology for the United States Public Health Service's Study of Untreated Syphilis in the Negro Male, they effectively ignored their own institution's culpability in the study's origins.¹ The erasure of the government and educational system's complicity in Virginia's eugenics program serves as a cautionary tale for contemporary Virginians and Americans as they confront the possibility of a "backdoor to eugenics" opened by new genetic technologies.

* * * *

The End of Eugenic Sterilization in Virginia

The final eugenic sterilizations in Virginia's state hospitals took place between 1972 and 1979. The uncertainty about the exact date when the last "eugenic" sterilization took place stems from the fact that the original law was partially repealed in 1974, but sixteen "therapeutic" sterilizations occurred at the Lynchburg Training School between 1974 and

¹Dr. John Fletcher, a prominent ethicist at the University of Virginia, and a leader in the push for a presidential apology, cited the connection between Virginia and the study, and called for a reckoning, but no further action was taken. This dissertation represents the closest approach to addressing Fletcher's concerns.

1979.² On February 22, 1980 the *Richmond Times-Dispatch* broke the news of Virginia's eugenic sterilization program. Suddenly, the specter of eugenics burst forth, reconstituted after years of conscious and semi-conscious erasure from the public memory. Three days later, the Virginia Senate unanimously voted to introduce a bill repealing the sterilization law.³ By that December, former patients of the state hospitals joined filed a class action lawsuit against their former institutional homes. Aided by the American Civil Liberties Union (ACLU), the suit alleged that many patients had been sterilized without properly understanding the nature of the procedure, a clear violation of the statutory procedure for sterilization.⁴ Moreover, the suit alleged that court-appointed guardians *ad litem* had failed to discharge faithfully their responsibility to represent these patients, instead going along with a "rubber stamp" procedure that mocked the meaning of due process. Praying that the Federal Court declare the sterilizations an unconstitutional violation of their civil rights, the survivors demanded that the state notify all of those still surviving and provide them with free medical services and mental health counseling. At a preliminary hearing District Court Chief Judge Robert Turk dismissed the charge of unconstitutionality, ruling that Mr. Justice Holmes's 54-year-old precedent in *Buck* settled the matter of constitutionality. Nevertheless, Judge Turk agreed that the allegations of procedural impropriety appeared

²Dr. K. Ray Nelson, director of the institution in 1979, helped to uncover the history of sterilization at Lynchburg, and dissociated himself from the former practices. Nelson—who took charge at the Lynchburg Colony for the Epileptic and Feeble-minded in 1973 and was replaced in 1980 when Virginians "rediscovered" their sterilization history—and other Virginia officials stated that the 21 sterilizations performed under Nelson's watch occurred in the course of "procedures performed for health purposes that also resulted in residents' sterility." Leo E. Kirven, Jr. to Julius Paul, July 15, 1980, "Virginia" folder, Julius Paul Collection [copy in possession of author]. Eugenic sterilization officially ceased in 1972 following a directive banning the practice from the state Board of Mental Health and Retardation. In 1974, the law was amended to allow involuntary sterilization provided the hospital had a circuit court order. Sandra G. Boodman and Glenn Frankel, "Over 7,500 Sterilized by Virginia," *Washington Post*, February 23, 1980, A1; and Robert Rheinhold, "Virginia Hospital Chief Traces 50 Years of Sterilizing the 'Retarded'," *New York Times*, February 23, 1980, 6.

³Senate Bill No. 537, *Virginia Bills, Senate* (1980). The bill did not pass until the following session of the legislature.

⁴A documentary film recapping both the history of Virginia's sterilization law and the *Poe* case is Steven Trombley, *The Lynchburg Story*, produced and directed by Stephen Trombley, 55 min., Worldview Pictures Productions, 1993, videocassette.

substantial enough to allow the case to proceed on those grounds.⁵ Ultimately, the ACLU settled *Poe* in January 1985. The state agreed to notify survivors through radio, television, and print advertisements, operate a toll-free information hotline, and train people to counsel those who had been sterilized.⁶

When *Poe v. Lynchburg* was filed, Carrie Buck still lived in Charlottesville. Carrie had married her second husband Charles Dettamore in 1965, and the couple lived in a cinderblock shed that lacked any indoor plumbing and was heated by a wood stove.⁷ Carrie's sister Doris, also sterilized at the Lynchburg Colony, had married in 1940. Neither woman knew that she had been sterilized until later; Carrie realized her condition the next month, Doris did not know until Dr. K. Ray Nelson told her in 1979. Doris Buck told reporters that, "They [doctors at Lynchburg] told me the operation was for an appendix and rupture."⁸ When asked whether she knew what had really been done, Doris said, "My husband and me wanted children desperate—we were crazy about them. I never knew what they'd done with me." Asked by reporters about her sterilization, Carrie replied, "They just told me I had to have an operation, that was all."⁹ Both women lived the last years of their lives apprised of the truth of their condition; neither saw justice done. Doris predeceased Carrie by a few years, and Carrie finally died in 1983 at age 75.

Was Carrie Buck—or any of the Buck women, for that matter—feeble-minded? Paul Lombardo met her shortly before she died and wrote, "when I met her she was reading newspapers daily and joining a more literate friend to assist at regular bouts with the crossword puzzles. She was not a sophisticated woman, and lacked social graces, but mental health professionals who examined her in later life confirmed my impressions that

⁵Paul A. Lombardo, "Involuntary Sterilization in Virginia: From Buck v. Bell to Poe v. Lynchburg," *Developments in Mental Health Law* 3 (1983): 13–14, 18–21.

⁶"Va. Sterilization Suit Settlement Is Approved," *Washington Post*, January 19, 1985, D2.

⁷Ben A. Franklin, "Sterilization of Teen-Age Woman Haunting Virginia Decades Later," *New York Times*, March 7, 1980, A16.

⁸Doris Buck Figgins quoted in Boodman and Frankel, "Over 7,500 Sterilized," A1.

⁹J. David Smith and K. Ray Nelson, *The Sterilization of Carrie Buck: Was She Feeble-minded or Society's Pawn* (Far Hills, NJ: New Horizon Press, 1989), 216 (Doris), xviii (Carrie).

she was neither mentally ill nor retarded."¹⁰ So much for one of Mr. Justice Holmes's famed "three generations of imbeciles." Lombardo also discovered Carrie's daughter Vivian's school records at the Venable School in Charlottesville. Vivian died at age eight of "enteric colitis" which, as Gould notes, may indicate that "she fell victim to one of the preventable childhood diseases of poverty (a grim reminder of the real subject in *Buck v. Bell*)." Before she died, however, Vivian disproved the prediction of social worker Caroline Wilhelm that she was "not quite a normal baby." During four school terms from September 1930 to May 1932, Vivian established herself as a normal student of average ability who earned straight A's in "deportment." As Gould commented, "This offspring of 'lewd and immoral' women excelled in deportment and performed adequately, although not brilliantly, in her academic subjects."¹¹ With Carrie's mother long dead and records about her non-existent, it is impossible to refute the eugenicists' and Justice Holmes's convictions about all three generations of Carrie's family. Nevertheless, disproving their claims in two of three instances fully undermines the eugenic rationale used to justify their sterilization.

* * * *

Eugenics Then and Now

An editorial in the *Washington Post*, written five days after the "rediscovery" of eugenic sterilization in Virginia, chided the state for its backwardness. Writing that eugenics "was abandoned long ago," the editor charged, "But the state of Virginia, in its usual way, was slow to recognize that time and knowledge had passed its sterilization program by. As a result, not until 1972—long after eugenics had been discredited

¹⁰Paul A. Lombardo, quoted in Steven J. Gould, "Carrie Buck's Daughter," *Natural History* 93 (1984): 14–18; and Gould, "Carrie Buck's Daughter," *Constitutional Commentary* 2 (1985): 331–39, quotation 336.

¹¹Gould, *Ibid.*, 338.

elsewhere—did this program come to an end."¹² Technically correct, these statements underscore the troubling legacy of eugenics in America and Virginia. Virginia did indeed continue to operate "in the name of eugenics" much longer than most other places. America generally, however, hewed to eugenic ideology much longer than most early scholars ever considered possible. Explaining the durability of eugenic ideology in Virginia goes a long way toward understanding the powerful role eugenic notions have played in shaping American approaches to social structure throughout the twentieth century.

Mark Haller wrote that Sir Francis Galton "preached...that man's character and capacities were primarily shaped by heredity....In time this became for him a new ethic and a new religion." Galton once said, "An enthusiasm to improve the race is so noble in its aim, that it might well give rise to the sense of a religious obligation."¹³ Virginia eugenicists shared Galton's beliefs in the power of eugenics to improve mankind. These individuals, scientists and lay supporters alike, appreciated eugenics' "logical" progression from the observation of human differences to the systematization of those differences as expressions of innate biology, to the formulation of public policy based on biological axioms.¹⁴ Viewing themselves as modern and Progressive, and especially as religious

¹²"Three Generations of Imbeciles...," *Washington Post*, February 27, 1980, . This editorial mistakenly identified Carrie and Doris Buck as the "third generation Justice Holmes wrote about 53 years ago."

¹³Haller, *Eugenics*, 10, and Galton in Haller, 17. Haller further notes, in a passage reminiscent of Lewis's rhetoric, that "Eugenists, aware that their creed met resistance in religious circles defended the compatibility of religion and eugenics," 83.

¹⁴Lewis aided others in their scientific pursuit of the eugenics grail. He corresponded with Dr. E. S. C. Handy, a man who researched in "Genethnics" a thinly-veiled eugenics program, the name of which was an amalgam of "genetics" and "ethnics." In writing a letter of support for Handy's Reston, Virginia-based company, Lewis wrote, "While I am not a specialist in the field of Genethnics, I am greatly interested in the possibilities it offers for a better understanding of human genetics and therefore a more intelligent approach to the utilization of modern science for people. So much is done for cattle and corn . . . that it seems to me extraordinary that there has been such neglect of the principles of genetics in dealing with human institutions and problems. I respect your [Genethnics] scientific approach and am enthusiastic as to the possible good that may come from it." IFL to Dr. E. S. C. Handy, President, Genethnics, 26 June 1951. DP: 5119: 21: H. See also related correspondence, Handy to IFL, 18 May 1951; IFL to Handy, 12 October 1950; and Handy to IFL, 7 October 1950. Lewis and Orland White assisted Handy in establishing Genethnics, even helping him obtain a room in Alderman Library. See, Handy to IFL, 26 December 1941; IFL to Handy, 16 October 1941, CDS 29-44: 3299: 1941: H.

liberals, the foundation of eugenics on Darwinian principles posed no direct challenge to these elite Virginians religion. Indeed, they attempted to use eugenics to articulate a new secular creed of elite white progress that based itself on the biological subordination of blacks, the poor, and women.

Eugenics, as a secular creed, allowed elite Virginians to valorize all the traits they liked best about themselves. Constantly extolling the Jeffersonian vision of the yeoman farmer, and the purity of the "Anglo-Saxon stock" in Virginia, these elites differentiated these characteristics as expressed in themselves and in the "poor white trash" of the mountains and cities. Elite whites, marked by refined gentility, education, and the purported ability to keep others "in their place" displayed their birthright as the "natural" aristocrats who should determine the state and America's destiny. The best of the "Old Virginians," as Robert Bennett Bean called them, remained "pure" Anglo-Saxons, unadulterated (they believed) with the "blood" of other races. This vigorous "stock" pushed ever forward into new fields of endeavor. Their "racial" strength prevented them from the decadence that afflicted "poor white trash." Whites left in mountain hollows revealed their genetic backwardness through their social stultification. Their tendency to "inbreeding" and, in some instances, mixing with blacks and native Americans further underscored their genetic inferiority. Thus, Virginia eugenicists conflated their cultural biases and scientific convictions in a distinctly "southern" fashion.

Given the symbiotic nature of culture and science during the Progressive Era, perhaps it is less surprising that the hereditary patterns Virginia eugenicists "observed" matched precisely their biases regarding class, race, and culture. Historical context, then as now, shaped these individuals and their approach to science and social problems. Their efforts further defined both the scientific method and the relationship of science to society. In the

process, they helped forge a new American identity predicated on whiteness. Ultimately, eugenics allowed southern and northern elites to bind the festering wounds of regional antagonism. Boston Brahmins and the First Families of Virginia met in mutual admiration of each other's "pure" ancestry and eugenic genealogy. Just as northern elites began to fear the menace of the feeble-minded, poor, criminals, and southeastern European immigrants, so too did white Virginians sound the alarm over their feeble-minded population and African-Americans who, whites believed, threatened their racial purity and social prerogatives. That many elite whites found common ground through eugenics simply speaks to the power of racial identity in shaping people's relationship to the American social contract. In times of crisis, whiteness became a source of solidarity that undergirded individual notions of identity, and preceded claims to citizenship. In the eugenic culture of Virginia and America during the 1910s and 1920s, to be fully human and a first class citizen one needed to be able to claim not simply whiteness, but whiteness of the purest and most rarefied sort.

What is surprising is the durability of these beliefs, not their ability to unite whites through racism. Beginning with Jefferson, and trickling down through Cabell and Barringer, then picked up and ramified by the modern eugenicists, hereditarianism set deep roots in Virginia culture. The "eugenic metaphor" resonated with both the traditionalist agrarianism of the Virginia gentry, and their overweening desire to join the modern world on their own terms. The tension between traditionalism and Progressivism strained Virginia's intelligentsia, pushing them to rhetorical and logical extremes in their efforts to maintain the culture they valued within a new social structure many viewed as anathema. Old words like stock, kin, and blood became closely associated in the public mind with the emerging science of race, germ plasm, and genes. Moreover, the similarities between the

languages of eugenics and public health reinforced the apparent interchangeable efficacy of their approaches to social problems.

Meeting within the ambient racism, nativism, and fear of "contamination" extant in America, ideas about "segregation" and "containment" fused, becoming accepted as the most reasonable, efficient, and effective approaches to public health. Genetics underpinned health, not a disease free environment. To the extent that race and the "quality" of one's stock determined disease susceptibility, eugenics became synonymous with preventive medicine. The various United States Public Health Service (USPHS) programs to contain syphilis within rural black populations emphasized the separation of black social concerns from white social concerns, buttressing the culture of racial division. Containment, like quarantine and segregation, blamed the victims; holding African Americans, the poor, and the mentally afflicted at fault for becoming infected, sickly, and insane. In public health terms, containment successfully quarantined a population until the disease had run its course. In eugenic terms, containment provided negative pressure on a doubly-dysgenic class—twice inferior because both black and diseased, or poor and diseased—promising at least to limit the dysgenic effect of these groups on "normal" white society and, at most, the eventual extirpation of these populations through the ravages of disease and reduced fertility. Containment thus embodied salient public health and eugenic goals in the white USPHS approach to "Negro Health." White elites defined the bodies of marginal populations as, *de facto*, diseased. Stigmatized, these people came to be seen as subhuman, fit only for control, isolation, and extermination.

This inering of ideas and concepts created a very flexible ideological amalgam that appealed to those who sought power and those who struggled against the various institutional powers ranged against them. Elite whites and poor whites could walk through a eugenic exhibition at a fair and both come out believing they were part of the "fit" group of Old Americans. This sense of security proved powerful enough that, when Arthur

Estabrook and Ivan McDougale studied the poor people in Amherst County, they found it relatively easy to get people to sit down and talk about themselves and, especially, their neighbors. Black Virginians, from different angles depending on whether they hewed to integrationist or separatist politics, could also adopt eugenics as a source for black "uplift." Whether one supported the National Association for the Advancement of Colored People's equalitarian creed and DuBois's notion of the talented tenth, or Marcus Garvey's Pan-Africanist, bourgeois nationalism, eugenics could be deployed as a means to an end. Increasing numbers of the talented tenth so that the groups fractional proportion rose, eventually, to encompass all blacks was, at heart, a deeply eugenic idea that relied on rationalized procreation. Garvey's cult of race purity, a black analog to the views espoused by Virginia's white eugenicists, also promised advance through conscious direction of breeding. Women who advocated eugenics liberated their own sexuality and gained increased cultural room for discussions of sex and reproduction. They also spread the gospel of birth control, both to free themselves from unwanted pregnancy, and to defend their class position by controlling the procreative habits of poorer people. In all these cases, the dysgenic other was always someone else.

Eugenics guided Virginia's social policy for over forty years, and was dismantled only when forces from outside the state (like the Supreme Court) could aid those fighting against eugenically legitimated injustice. Over the course of its history in Virginia, hereditarianism drifted from the periphery of the intellectual and social world to its very center and then back to the margins. Only slowly, as science and society beyond the borders of Virginia changed, did newer concepts displace hereditarianism and force it beyond the pale of scientific practice once again. In the meantime, eugenic and hereditarian ideas justified all

the forms of segregation operating in the Old Dominion. When segregation itself came under fire, defenders appeared wielding eugenics and hereditarianism in its defense.

The careers of the later hereditarian thinkers Henry Garrett and Carleton Putnam—a southerner and a Yankee—provide powerful testimony to Virginia's extended embrace of hereditarianism. After Garrett's testimony in the *Davis* case brought his ideas under fire at Columbia, he returned to his native Virginia and attempted to proselytize another generation. That he was only partially successful substantiates both the conservative forces within Virginia and the corrosive ideas slowly changing Virginia society. Nevertheless, when Carleton Putnam arose as a leading exponent of white supremacy, his 1961 book *Race and Reason: A Yankee View* relied heavily on eugenic doctrine. Putnam resuscitated the arguments expounded by men like Lothrop Stoddard, Madison Grant, Earnest Sevier Cox, and Virginia's academic eugenicists. When it came time to retire, Putnam moved to Virginia. One wonders if it is more than historical irony that Putnam died in Charlottesville, Virginia in 1998.

The persistence of eugenics within the academy helps to explain its power in Virginia's cultural and political arenas. Tenured professors who often had careers running in excess of thirty-five years, remained remarkably consistent in their beliefs. Their cultural loyalties skewed their scientific skepticism, creating a conservative impulse within Virginia's intellectual community. Ivey Lewis's career embodied this ossification of belief.

In 1952, a year before he retired as Miller Professor of Biology and Dean of the University of Virginia, Ivey Foreman Lewis considered acquiring artifacts belonging to Gregor Mendel. Lewis wrote, "The interest in Mendel is, of course, widespread. As the founder of modern genetics, he takes his place with Darwin in the history of Science. It is a rare opportunity for the University of Virginia to become a sort of shrine for the

geneticist."¹⁵ Juxtaposing the religious imagery of a shrine and the southern traditionalism of the University of Virginia to the modern images of higher education, science, Darwinian evolution, and genetics, Lewis underscored the tensions straining twentieth-century "southern identity": the competing desires both to be "modern" and to maintain a traditional, "southern" culture, often presumed to be antithetical to "modernity." Availing the wide appeal of genetics, Lewis placed Virginia's interest in the modern mainstream, freed of "backward" regional parochialism. Yet, enshrining Mendel atop Virginia's ivory tower rhetorically anchored the state to a ninety-year-old conception of biological destiny, thereby cutting against the notion of the university as a locus for the steady, "modern," and "progressive" advance of knowledge. Moreover, for Lewis, Mendel's artifacts physically represented not just genetics, but also the dying theories of eugenics, the science of "racial improvement." American eugenics, as a science, was predicated upon the iron laws of Mendelian genetics, which naturalized racial and class hierarchies. Lewis, teaching eugenics, used the "modern" parlance of science to justify and buttress long-standing southern beliefs about the relative social positions of whites and blacks, the rich and the poor, men and women.

Ivey Lewis's true belief resulted from the dialectic between culture and eugenics. Eugenic teaching "explained" southern social hierarchies even as southern culture reflected eugenicists' predictions about race, class, and gender. Scientists and their students believed that what they observed—class, gender, and most importantly race stratification—resulted from the unmediated operation of natural law, not the differentiation of society based upon biased value judgments. This attitude helps to explain the reluctance of some eugenicists to repudiate their positions when faced with "more objective" scientific refutation. Lewis, like

¹⁵IFL to Mrs. Bertha Wailes, 4 March 1952, DP: 5119: 29: W. Lewis retired the following fall, after reaching the then mandatory retirement age of 70.

so many of America's eugenicists, traced his own roots to Old Virginians and Old Americans and understood, in the deepest recesses of his conscious identity, his and their superiority. Eugenicists' absolute certainty that they were objective, and their belief that objectivity somehow guaranteed morality, remains an unnerving part of present-day scientific culture: scientists today tend to dismiss the possibility of repeating the "mistakes" of early eugenicists because today's science is somehow "more objective," and hence implicitly more moral, than the "bad science" advocated by eugenicists. Present-day scientists teach their students based on their belief in the validity of their observations—which they, just like Ivey Lewis, assert result from value-neutral, objective investigations.

Today's geneticists teach about genes connected to alcoholism, breast cancer, sexual orientation, and aggression as if the experiments that "discovered" these genes occurred in a culture that is not overly concerned with issues surrounding substance abuse, epidemiology, morality, and violence. Contemporary genetic researchers, more circumspect than the reporters who misconstrue their findings, still risk precisely the same errors made by Lewis. Perhaps it is hopeful that the government is already acting to restrict the disclosure and use of personal genetic information.¹⁶ Certainly it is hopeful that the American Association of Anthropologists urged the federal government to stop using the term "race" in the collection of information "because the concept of race is a social and cultural construction with no scientific basis in human biology," and that geneticists have been asked to use the 2000 census as an "ideal opportunity for geneticists to reiterate that their research does not support the concept of race as a biological entity."¹⁷ Surely both these efforts imply greater potential benefits than all the meaningless political grandstanding surrounding Presidential apologies and after-the-fact hand wringing.

¹⁶"President Clinton Takes Historic Action to Ban Genetic Discrimination in the Federal Workplace," News Release, February 8, 2000, copy in author's possession.

¹⁷Editorial, "Census, Race and Science," *Nature Genetics* 24 (February 2000), 97 (first quotation, 98).

Even more heartening is the call by a leading genetics journal to "look closer at the issues of race, populations and ethnicity in scientific discourse, which is often associated with poorly defined lay terminology." Finally, 100 years after the eugenic metaphor came into existence, scientists have come to appreciate the power of language in structuring lived reality. As the editor of *Nature Genetics* remarked, "This is not just a matter of sloppy language, but reflects the imprecise use of racial and ethnic classifications in biomedical research. Throughout history scientists have used social and politically determined racial categories to make scientific comparisons between races—with little or no discussion about the meaning or rationale." This comment is both hits and misses the mark, indicating the distance we have yet to travel before a new language of biology can come closer to representing the physical beings it purports to describe. First, the editor's assertion that scientists have long used "social and politically determined racial categories" is absolutely correct; it neglects, however, the fact that *all* categories are always already socially and politically constructed, and continues to beg the question of objectivity. Second, the claim that "little or no discussion about the meaning or rationale" occurred regarding the use of these socially constructed categories is, at best, a half-truth. Since at least the late nineteenth century, racial designators have been invoked as if their meanings were fixed immutable and transparent to all who encountered them—to be black in America, most assumed, was the same as being black everywhere. By the 1910s and 1920s, scientists were well aware of the blurred lines separating race and ethnicity, culture and biology in describing humanity; they self-consciously debated both the meanings of these terms and the rationale behind their use. In the end, these debates ended where they began—individual investigators deployed these terms in ways that resonated with both their scientific and political outlooks which were never separated, despite the investigators' claims to the contrary.

Today's scientists, no less than yesterday's, must disabuse themselves of the notion that some objective, eugenic realm of science exists, free of the "contaminating" influence of political, social, and cultural biases. To that end, it is heartening to see *Nature Genetics* acknowledge that, "Race might [in an investigation] be a proxy for discriminatory experiences, diet, or other environmental factors.... There is no justification, however, to use race as a substitute for other parameters that can be measured, such as genetic variation or differences in metabolism." Hopefully, the journal's promise that it will, henceforth, "require that authors explain why they make use of particular ethnic groups or populations, and how classification was achieved" and its request that scholarly referees "consider these parameters when judging the merits of a manuscript," will achieve two ends. First, if adhered to thoughtfully, these policies should "raise awareness and inspire more rigorous design of genetic and epidemiological studies."¹⁸ Second, such practices may help to erode the disciplinary myopia that convinces many "hard" scientists that they examine reality in objective and unmediated fashion. If *Nature Genetics*'s call has this effect, it will go a long way toward restoring the closest thing to "objectivity" the scientific method really has: a healthy, vigorous, and deeply critical skepticism that takes nothing, not even the language in which scientific findings are conveyed, for granted.

Understanding the relationship between Virginia eugenicists, their science, teaching, and the segregated culture in which they lived helps clarify our own valuation of science today, and hopefully, the role it plays in determining liberating, rather than oppressive, public policy. We cannot undo the errors made by our forebears in Virginia and elsewhere, although we live with and attempt to dismantle their bigoted legacy. By examining the culture created by academic scientists—both in the past and present—however, we can maintain the vigilance necessary to avoid repeating the errors that insinuated racist, sexist, and class-biased beliefs into our educational and social structures.

¹⁸Ibid, 98.

SOURCES CONSULTED

Primary Sources

Manuscript Collections:

Edwin Anderson Alderman Papers, Alderman Library, University of Virginia
 American Genetics Association Papers, American Philosophical Society Library, Philadelphia
 Blandy Experimental Farm Papers, Alderman Library, University of Virginia
 Harold Hitz Burton Papers, Madison Building, Library of Congress
 Earnest Sevier Cox Papers, Duke University
 Hugh Smith Cumming Papers, Alderman Library, University of Virginia
 Charles Benedict Davenport Papers, American Philosophical Society Library, Philadelphia
 Charles Benedict Davenport Papers, Cold Spring Harbor Series No. 2, American Philosophical Society Library, Philadelphia
 Donald Walton Davis Papers, Swem Library, College of William and Mary
 Dean's Papers [Ivey F. Lewis], Alderman Library, University of Virginia
 William O. Douglas Papers, Madison Building, Library of Congress
 Eugenics Record Office Papers, American Philosophical Society Library, Philadelphia
 Felix Frankfurter Papers, Madison Building, Library of Congress
 Felix Frankfurter Collection, Harvard Microfilm, Madison Building, Library of Congress
 John Marshall Harlan Papers, Seeley J. Mudd Library, Princeton University
 David Starr Jordan Papers, Stanford University Libraries, Stanford University
 Harvey Ernest Jordan Papers, Alderman Library, University of Virginia
 Harvey Ernest Jordan Collected Scientific Papers, Claude Moore Health Sciences Library, University of Virginia
 Harry Hamilton Laughlin Papers, Pickler Memorial Library, Truman University (Northeast Missouri State College)
 Ivey Foreman Lewis Collection, Alderman Library, University of Virginia
 Ivey Foreman Lewis Papers, Alderman Library, University of Virginia
 Motion Picture Censorship Board Records, Virginia State Archives and Records Center
 National Association for the Advancement of Colored People Papers, Madison Building, Library of Congress
 Thomas Parran Papers, University of Pittsburgh
 John Leslie Powell Papers, Alderman Library, University of Virginia
 Thomas Wyatt Turner Papers, University Archives, Hampton University
 Earl Warren Papers, Madison Building, Library of Congress
 Orland E. White Papers, Alderman Library University of Virginia

Interviews:

Franklin Bacon, Westminster Canterbury, Charlottesville, Va., December 1, 1999.
 Raymond Bice, Westminster Canterbury, Charlottesville, Va., December 1, 1999.
 David Carliner, Carliner and Rehmes Office, Washington, D.C., November 5, 1995.

College and University Course Catalogs Surveyed:

College of William and Mary
 Hampton University
 Randolph-Macon College
 Richmond College/University of Richmond
 University of Virginia
 Virginia Union University

Journals Surveyed:*American Breeders Magazine**Birth Control Review**Eugenical News**Eugenics**Journal of Heredity**Journal of the American Medical Association**Virginia Medical Semi-Monthly and Virginia Medical Monthly***Newspapers Surveyed:***Cavalier Daily* (University of Virginia)*Charlottesville Daily Progress**New York Times**Richmond Planet**Richmond News Leader**Richmond Times-Dispatch**Washington Post***Journal Articles, Addresses, and Book Chapters:**

Barringer, Paul Brandon. "An Essay on Constitutional Syphilis." *North Carolina Medical Journal* 12 (1883): 89-95; 137-45.

Bean, Robert Bennett. "Human Types," *The Quarterly Review of Biology* 1 (1926): 360-92.

_____. "Types of the Three Great Races of Man," *The American Journal of Anatomy* 37 (1926): 237-71.

_____. "Types of Man in the Yellow-Brown Race." *The American Journal of Anatomy* 35 (March 1925): 63-80.

_____. "The Three Anatomic Types of Africa." *The American Journal of Anatomy* 33 (March 1924): 105-18.

_____. "Two European Types." *The American Journal of Anatomy* 31 (March 1923): 359-71.

_____. "The Sitting Height." *American Journal of Physical Anthropology* 5 (October-December, 1922): 349-90.

_____. "Notes on the Body Form of Man." In *Eugenics in Race and State: Scientific Papers of the Second International Congress of Eugenics*, 7-24. Baltimore: Williams and Wilkins Company, 1923.

_____. "The Training of the Negro." *The Century Magazine* 72 (1906): 947-953.

_____. "The Negro Brain." *The Century Magazine* 72 (1906): 778-784.

_____. "Some Racial Peculiarities of the Negro Brain." *The American Journal of Anatomy* 5 (1906): 353-432.

- Bean, Robert Bennett and Wilmer Baker. "Some Racial Characteristics of the Spleen Weight in Man." *American Journal of Physical Anthropology* 2 (1919): 1-9.
- . "Some Racial Characteristics of the Liver Weight in Man." *American Journal of Physical Anthropology* 2 (1919): 167-74.
- . "Some Racial Characteristics of the Heart and Kidney Weight in Man," *American Journal of Physical Anthropology* 2 (1919): 274-281.
- Davenport, Gertrude Crotty and Charles B. Davenport. "Heredity of Skin Pigmentation in Man." *The American Naturalist* 44 (November, 1910): 641-72.
- Davenport, Charles B. and Morris Steggerda, "Race Crossing in Jamaica," *Scientific Monthly* 27 (September, 1928): 225-238.
- Ferguson, George Oscar, Jr. "The Mental Status of the American Negro." *The Scientific Monthly* 12 (June 1921): 533-43.
- . "The Psychology of the Negro: An Experimental Study." *Archives of Psychology* 36 (April 1916): 1-138.
- Heck, William Henry. "Citizenship in Southern Education." *School Review* 12 (1904): 810-819.
- Jordan, Harvey Ernest. "The Histology of a Testis from a Case of Human Hermaphroditism, with a Consideration of the Significance of Hermaphroditism in Relation to the Question of Sex Differentiation." *American Journal of Anatomy* 31 (September 1922): 27-52.
- . "Description of a Case of False Hermaphroditism." *Anatomical Record* 15 (1918): 27-35.
- . "Hereditary Lefthandedness, with a Note on Twinning." *Journal of Genetics* 4 (1914-1915): 67-81.
- . "Eugenics—It's Data Scope and Promise as Seen by the Anatomist." In *Eugenics: Twelve University Lectures*, Morton A. Aldrich, et. al., 107-38. New York: Dodd, Mead, and Company, 1914.
- . "The Biological Worth and Social Status of the Mulatto." *The Popular Science Monthly* 82 (June 1913): 573-82.
- . "Surgical Sex-Sterilization: Its Value as a Eugenic Measure." *The American Journal of Clinical Medicine* 20 (1913): 983-87.
- . "Infant Mortality in Relation to the Hereditary Effects of Tuberculosis," *Transactions of the American Association for the Study and Prevention of Infant Mortality* 3 (1913): 154-55.
- . "The Eugenical Aspect of Venereal Disease," *Transactions of the American Association for the Study and Prevention of Infant Mortality* 3 (1912-1913): 156.

- _____. "The Inheritance of Skin Color." *Science* 36 n.s. (August 2, 1912): 151-52.
- _____. "Studies in Human Heredity." *Bulletin of the Philosophical Society, University of Virginia* 1 (July 1912): 293-317.
- _____. "The Place of Eugenics in the Medical Curriculum." *Problems in Eugenics: Papers Communicated to the First International Eugenics Congress*, 396-99. London: Eugenics Education Society, 1912.
- _____. "The Need for Genetic Studies of Pulmonary Tuberculosis." *Journal of the American Medical Association* 59 (1912): 1518-1519.
- _____. "Hereditary Tuberculosis and Infant Mortality." *Transactions of the American Association for the Study and Prevention of Infant Mortality* 2 (1912): 144-145.
- _____. "The Eugenic Bearings of the Efforts for Infant Conservation." *Transactions of the American Association for the Study and Prevention of Infant Mortality* 2 (1912): 145-146.
- _____. "Eugenics: The Rearing of the Human Thoroughbred," *Cleveland Medical Journal* 11 (1912): 875-.
- _____. "Heredity as a Factor in the Improvement of Social Conditions." *The American Breeders Magazine* 2 (1911): 246-254.
- _____. "The Inheritance of Left-Handedness." *American Breeders Magazine* 2 (1911): 19-29, 113-124.
- _____. "Heredity as a Factor in the Improvement of Social Conditions," *American Breeders Magazine* 2 (1911): 246-54.
- _____. "A Comparative Microscopic Study of the Melanin Content of Pigmented Skins with Special Reference to the Question of Color Inheritance Among Mulattos." *The American Naturalist* 45 (August, 1911): 449-470.
- _____. "Recent Literature Touching the Question of Sex-Determination," *American Naturalist* 44 (1910): 245-52.
- _____. "Cytologic Study of the Egg of Cumingia, with special reference to the history of the chromosomes and the centrosome." *Archiv für Zellforschung* 4 (1910): 243-52.
- _____. "Facts Concerning the Determination and Inheritance of Sex." *Popular Science* 69 (June 1909): 540-50.
- _____. "Causation of Sex by E. Rumley Dawson," *American Naturalist* 43 (December 1909): 756-62.
- _____. "Relation of the nucleolus to the chromosomes in the primary oocyte of *Asterias forbesii*." *Publication Number 102*, 37-72. Washington, D.C.: Carnegie Institution of Washington, 1908.

_____. "Accessory Chromosome in *Aplopus Meyeri*." *Anatomische Anzeiger* 32 (1907): 284-95.

Lewis, Ivey Foreman. "Biologist Supports Curb on Immigrants," *New York Times* (April 6, 1924): p. E5.

_____. "William Henry Heck 1879-1919." *University of Virginia Alumni Bulletin* (October 1919): 357-79.

Mall, Franklin P. "On Several Anatomical Characters of the Human Brain, Said to Vary According to Race and Sex, with Especial Reference to the Weight of the Frontal Lobe," *The American Journal of Anatomy* 9 (1909): 1-32.

Plecker, Walter A. "Shall We All Be Mulattoes?" *Literary Digest* 23 (March 7, 1925):

Preston, George J. "Hereditary Disease and Race Culture." *The Popular Science Monthly* 29 (September 1886): 641.

Royster, Lawrence Thomas. "The School Child in its Relation to Eugenics," *Transactions of the Fourth International Congress on School Hygiene* 4 (1914): 26-35.

Vonderlehr, R. A., Taliaferro Clark, O. C. Wenger, and J. R. Heller, Jr. "Untreated Syphilis in the Negro Male: A Comparative Study of Treated and Untreated Cases." *Venereal Disease Information* 17 (January 1936): 260-65.

White, Orland Emile. "Is Dementia Praecox Inheritable? Should a Victim's Relatives Marry?" *Eugenics* 2 (October 1929): 23.

_____. "Sterilization: A Symposium." *Birth Control Review* 12 (March 1928): 89-90.

_____. "Mankind at the Crossroads." *Birth Control Review* 8 (February 1924): 55-56.

_____. "Inbreeding and Outbreeding." *The New Republic* (November 10, 1920): 279-80.

Books:

Aldrich, Morton A., et. al. *Eugenics: Twelve University Lectures*. New York: Dodd, Mead and Company, 1914.

Barringer, Paul Brandon. *The Natural Bent*. Anna Barringer, ed. Chapel Hill, N.C.: University of North Carolina Press, 1949.

Bean, Robert Bennett. *The Peopling of Virginia*. Boston: Chapman & Grimes, Inc., 1938.

_____. *The Races of Man: Differentiation and Dispersal of Man*. New York: The University Society, 1932.

_____. *The Racial Anatomy of the Philippine Islanders*. Philadelphia and London: J. B. Lippincott Company, 1910.

- Brigham, Carl C. *A Study of American Intelligence*. Princeton, N.J.: Princeton University Press, 1923.
- Bruce, Philip Alexander. *History of the University of Virginia 1818-1919: The Lengthened Shadow of One Man*. 5 vols. New York: The Macmillan Company, 1919-1922.
- Cabell, James Lawrence. *The Testimony of Modern Science to the Unity of Mankind; being a summary of the conclusions announced by the highest authorities in the several departments of physiology, zoology and comparative philology in favor of the specific unity and common origin of all the varieties of man*. New York: Robert Carter and Brothers, 1859.
- Castle, William E., et. al. *Heredity and Eugenics*. Chicago: University of Chicago Press, 1912.
- Cox, Earnest Sevier. *Black Belt Around the World*. Richmond, Va.: By the author, Mitchell & Hotchkiss, Printers, 1963.
- _____. *Teutonic Unity: A Plan for Peace*. Richmond, Va.: By the author, 1951.
- _____. *White America*. Richmond, Va.: The White America Society, 1923.
- Cumming, Hugh Smith. "Presidential Address." *American Journal of Public Health* 21 (November, 1931): 1195.
- Dabney, Virginius. *Liberalism in the South*. Chapel Hill: University of North Carolina Press, 1932.
- Davenport, Charles B. *How We Came By Our Bodies*. New York: Henry Holt and Company, 1936.
- _____. *The Feebly Inhibited*. Washington, D.C.: The Carnegie Institution of Washington, 1915.
- _____. *Heredity of Skin Color in Negro-White Crosses*. Washington, D.C.: Carnegie Institution of Washington, 1913.
- _____. *Heredity in Relation to Eugenics*. New York: Henry Holt and Co., 1911.
- _____. *Eugenics*. New York: Henry Holt and Company, 1910.
- DuBois, W. E. B. *The Souls of Black Folk*. New York: Penguin Books, 1989.
- Dunn, L. C. and Theodosius Dobzhansky. *Heredity, Race and Society*. 2d. ed. New York: New American Library of World Literature, 1952.
- East, Edward M. *Heredity and Human Affairs*. New York and London: Charles Scribner's Sons, 1927.

- _____. *Mankind at the Crossroads*. New York and London: Charles Scribner's Sons, 1924.
- East, Edward M. and Donald F. Jones. *Inbreeding and Outbreeding: Their Genetic and Sociological Significance*. Philadelphia and London: J. B. Lippincott Company, 1919.
- Estabrook, Arthur H. and Ivan E. McDougale. *Mongrel Virginians: The Win Tribe*. Baltimore: The Williams & Wilkins Company, 1926.
- Eugenics Education Society. *Problems in Eugenics: Report of Proceedings of the First International Eugenics Congress*. 2 Vols. London: Eugenics Education Society, 1913.
- _____. *First International Eugenics Congress: Scientific Papers and Appendices*. London: Eugenics Education Society, 1912.
- Eugenics Record Office. "Report of the Committee to Study and To Report on the Best Practical Means of Cutting Off the Defective Germ Plasm in the American Population." *Bulletin 10a and 10b*. Cold Spring Harbor, Long Island: Eugenics Record Office, 1914.
- Galton, Sir Francis. *Inquiries into Human Faculty and Its Development*. London: Macmillan, 1883; reprint edition, New York: AMS Press, 1973.
- _____. *Hereditary Genius: An Inquiry into Its Laws and Consequences*. London: Macmillan, 1869.
- Goddard, Henry Herbert. *The Kallikak Family*. New York: The MacMillan Company, 1912; reprint, New York: Arno Press, 1973.
- Gosney, E. S. and Paul Popenoe. *Sterilization for Human Betterment: A Summary of Results of 6,000 Operation in California, 1909-1929*. New York: The MacMillan Company, 1931.
- Grant, Madison. *Conquest of a Continent: Or, the Expansion of Races in America*. New York and London: Charles Scribner's Sons, 1933.
- _____. *The Passing of the Great Race: Or, the Racial Basis of European History*. New York: Charles Scribner's Sons, 1916.
- Heck, William Harry. *Mental Discipline and Educational Values*. New York: John Lane Company, 1911.
- James, Arthur W. *Virginia's Social Awakening: The Contribution of Dr. Mastin and the Board of Charities and Corrections*. Richmond, Va.: Garrett and Massie, Incorporated, 1939.
- Jefferson, Thomas. *Notes on the State of Virginia*. Edited by William Peden. Chapel Hill: University of North Carolina Press, 1954; reprint ed., New York and London: W. W. Norton & Company, 1972.

- Jennings, Herbert Spencer. *The Biological Basis of Human Nature*. New York: W. W. Norton & Company, Inc., 1930.
- Jordan, David Starr and Harvey Ernest Jordan. *War's Aftermath: A Preliminary Study of the Eugenics of War*. Boston and New York: Houghton Mifflin Company, 1914.
- Kallen, Horace M. *Culture and Democracy in the United States*. New York: Boni and Livright, 1924; reprint, New Brunswick, N.J.: Transaction Publishers, 1998.
- Laughlin, Harry H. *Eugenical Sterilization in the United States: A Report of the Psychopathic Laboratory of the Municipal Court of Chicago*. Chicago: Psychopathic Laboratory of the Municipal Court, 1922.
- Lee, Guy Carleton. ed. *A History of North America*. Vol. 17, *The Rise of the New South*, by Philip Alexander Bruce. Philadelphia: George Barrie & Sons, 1905.
- Newman, Horatio Hackett. *Evolution, Genetics and Eugenics*. 2d ed. Chicago: University of Chicago Press, 1925.
- Osborn, Frederick. *Preface to Eugenics*. New York: Harper & Brothers, 1940.
- Parran, Thomas. *Shadow on the Land: Syphilis*. New York: Reynal and Hitchcock, 1937.
- Popenoe, Paul and Roswell Hill Johnson. *Applied Eugenics*. 1st, 2d, and 3d eds. New York: The MacMillan Company, 1918, 1926, 1931.
- Powell, John. *A Breach in the Dike: An Analysis of the Sorrels Case Showing the Danger to Racial Integrity from Inter-marriage of Whites with So-Called Indians*. Richmond, VA: The Liberty Printing Press, n.d., ca. 1925.
- Reuter, Edward B. *Race Mixture: Studies in Inter-marriage and Miscegenation*. New York: McGraw-Hill Company, Inc., 1931.
- Sanger, Margaret. *The Pivot of Civilization*. New York: Brentano's Publishers, 1922.
- _____. *Woman and the New Race*. New York: Brentano's Publishers, 1920.
- Second International Congress of Eugenics, Harry H. Laughlin Chairman of Exhibits. *The Second International Exhibition of Eugenics*. Baltimore: Williams & Wilkins Company, 1923.
- Stoddard, Lothrop. *Clashing Tides of Colour*. New York and London: Charles Scribner's Sons, 1935.
- _____. *Re-Forging America: The Story of Our Nationhood*. New York and London: Charles Scribner's Sons, 1927.
- _____. *Scientific Humanism*. New York and London: Charles Scribner's Sons, 1926.

- _____. *Revolt Against Civilization: The Menace of the Under Man*. New York: Charles Scribner's Sons, 1922.
- _____. *The Rising Tide of Color: Against White World Supremacy*. New York: Charles Scribner's Sons, 1920.
- Terman, Lewis M. *Genetic Studies of Genius*. Stanford, Calif.: Stanford University Press, 1947.
- Third International Congress of Eugenics, Committee on Publication. *A Decade of Progress in Eugenics: Scientific Papers of the Third International Congress of Eugenics*. Baltimore: Williams & Wilkins Company, 1934; reprint, New York and London: Garland Publishing Company, 1984.
- Thomdike, Edward Lee. *Human Nature and the Social Order*. New York: The MacMillan Company, 1940.
- _____. *Educational Psychology*. Vol. 3, *Mental Work and Fatigue and Individual Differences and Their Causes*. New York: Teachers College, 1921.
- _____. *Individuality*. Boston and New York: Houghton Mifflin Company, 1911.
- _____. *Educational Psychology*. 2d. ed. New York: Teachers College, 1910.
- Tilton, McLane. ed. *Directory of the Living Alumni of the University of Virginia, 1931*. Charlottesville, Va.: The Michie Company, Printers, 1931.
- Twelve Southerners. *I'll Take My Stand: The South and the Agrarian Tradition*. New York: Harper and Brothers, 1930.
- Wiggam, Alfred E. *The Fruit of the Family Tree*. 3d. ed. New York: The Bobbs-Merrill Company, 1922; reprint, New York: Blue Ribbon Books, 1926.
- Whitney, Leon F. *The Case for Sterilization*. New York: Frederick A. Stokes Company, 1934.
- _____. *The New Decalogue of Science*. 3d. ed. New York: The Bobbs-Merrill Company, 1922; reprint, New York: Garden City Publishing Company, 1926.

Secondary Sources

Theses, Dissertations, and Conference Papers:

- Cooke, Kathy Jane. "A Gospel of Social Evolution: Religion, Biology, and Education in the Thought of Edwin Grant Conklin." Ph.D. diss., University of Chicago, 1994.
- Dennis, Michael A. "Educating the 'Advancing' South: State Universities and Progressivism in the New South, 1887-1915." Ph.D. diss., Queen's University, Kingston, Canada, 1996.
- Dorr, Gregory Michael. "Rearing Human Thoroughbreds: Eugenics, Medical Education, and Public Health." Paper delivered at the American Association for the History of Medicine Conference, Bethesda, Maryland, May 21, 2000.

- English, Daylanne Kathryn. "Eugenics, Modernism and the Harlem Renaissance." Ph.D. diss., University of Virginia, 1996.
- Hassencahl, Frances Janet. "Harry H. Laughlin, 'Expert Eugenics Agent' for the House Committee on Immigration and Naturalization, 1921 to 1931." Ph.D. diss., Case Western Reserve University, 1970.
- Hiltzik, Lee Richard. "The Brooklyn Institute of Arts and Sciences' Biological Laboratory, 1890-1924: A History." Ph.D. diss., State University of New York at Stony Brook, 1993.
- Himstedt, Erin. "Not for Their Own Good: African American Mental Health and Eugenic Sterilization Programs in Virginia." M.A. thesis, University of Virginia, 1995.
- Lombardo, Paul A. "Eugenic Sterilization in Virginia: Aubrey Strode and the Case of *Buck v. Bell*." Ph.D. diss., University of Virginia, 1982.
- Mehler, Barry Alan. "A History of the American Eugenics Society, 1921-1940." Ph.D. diss., University of Illinois at Urbana-Champaign, 1988.
- Mitchell, Michele. "Adjusting the Race: Gender, Sexuality, and the Question of African-American Destiny, 1877-1930." Ph.D. diss., Northwestern University, 1998.
- Sohn, Chang Moon. "Principle and Expediency in Judicial Review: Miscegenation Cases in the Supreme Court." Ph.D. diss., Columbia University, 1970.
- Underwood, Alice Jean. "Bon Air Learning Center: 1910-1970, Historical Perspectives on Institutional Policy." Ph.D. diss., University of Virginia, 1984.

Film:

- Filmmaker's Library. *The Lynchburg Story*. Produced and directed by Stephen Trombley. 55 min. Worldview Pictures Production, 1993. Videocassette.

Journal Articles and Book Chapters:

- Allen, Garland E. "Science Misapplied: The Eugenics Age Revisited." *Technology Review* (August/September 1996): 23-31.
- _____. "Eugenics and American Social History, 1880-1950." *Genome* 31 (1989): 885-89.
- _____. "The Misuse of Biological Hierarchies: The American Eugenics Movement, 1900-1940." *History and Philosophy of the Life Sciences* 5 (1983): 105-28.
- _____. "Genetics, Eugenics, and Class Struggle." *Genetics* 79 (June 1975): 29-45.
- Barkan, Elazar. "Reevaluating Progressive Eugenics: Herbert Spencer Jennings and the 1924 Immigration Legislation." *Journal of the History of Biology* 24 (Spring 1991): 91-112.

- Benedek, Thomas G. and Jonathon Erlen. "The Scientific Environment of the Tuskegee Study of Syphilis, 1920-1960." *Perspectives in Biology and Medicine* 43 (Autumn 1999): 1-21.
- Bickel, Alexander M. "The Passive Virtues." *Harvard Law Review* 75 (1961): 40-79.
- . "Original Understanding and the Segregation Decision." *Harvard Law Review* 69 (November 1955): 1-65.
- Boulton, Alexander O. "The American Paradox: Jeffersonian Equality and Racial Science." *American Quarterly* 47 (September 1995): 467-92.
- Borell, Merriley. "Biologists and the Promotion of Birth Control Research, 1918-1938." *Journal of the History of Biology* 20 (Spring 87): 51-87.
- Brechin, Gray. "Conserving the Race: Natural Aristocracies, Eugenics, and the U.S. Conservation Movement." *Antipode* 28 (Summer, 1996): 229-45.
- Dennis, Michael A. "Reforming the 'Academical Village': Edwin A. Alderman and the University of Virginia, 1904-1915." *Virginia Magazine of History and Biography* 105 (Winter 1997): 53-86.
- Diggins, John P. "Slavery, Race, and Equality: Jefferson and the Pathos of the Enlightenment." *American Quarterly* 28 (Summer, 1976): 206-28.
- Dorr, Gregory M. "Assuring America's Place in the Sun: Ivey Foreman Lewis and the Teaching of Eugenics at the University of Virginia, 1915-1953." *Journal of Southern History* 66 (May 2000): 257-296.
- . "Principled Expediency: Eugenics, *Naim v. Naim*, and the Supreme Court." *American Journal of Legal History* 42 (Spring 1998): 119-59.
- Dorr, Lisa Lindquist. "Arm in Arm: Gender and the Racial Integrity Act of 1924." *Journal of Women's History* XI (Spring 1999): 143-66.
- Edwards, William A. "Racial Purity in Black and White: The Case of Marcus Garvey and Earnest Cox." *Journal of Ethnic Studies* 15 (1987): 117-142.
- Elman, Philip. "The Solicitor General's Office, Justice Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History Interview by Norman Silber." *Harvard Law Review* 100 (1987): 817-52.
- Gould, Stephen J. "Carrie Buck's Daughter." *Natural History* 93 (July 1984): 14-20.
- Grill, Johnpeter Horst and Robert L. Jenkins. "The Nazis and the American South in the 1930s: A Mirror Image?" *Journal of Southern History* 58 (November 1992): 667-694.
- Gunther, Gerald. "The Subtle Vices of the 'Passive Virtues'—A Comment on Principle and Expediency in Judicial Review." *Columbia Law Review* 64 (1964): 1-25.

- Hall, Jacqueline Dowd. "'The Mind That Burns in Each Body': Women, Rape, and Racial Violence." In *Powers of Desire: The Politics of Sexuality*, eds. Ann Snitow, Christine Stansell, and Sharon Thompson, 328-49. New York: Monthly Review Press, 1983.
- Hammar, Lawrence. "The Dark Side to Donovanosis: Color, Climate, Race and Racism in American South Venereology." *Journal of Medical Humanities* 18 (1997): 40-47.
- Horsburgh, Beverly. "Schrdegreesodinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color." *Cardozo Law Review* 17 (January 1996): 531-582.
- Humphrey, David C. "Dissection and Discrimination: The Social Origins of Cadavers in America, 1760-1915." *Bulletin of the New York Academy of Medicine* 49 (September 1973): 819-27.
- Jordan, June. "Mississippi 'Black Home': A Sweet and Bitter Bluesong." *New York Times Magazine* (October 11, 1970): 64-65, 67, 70, 72, 74, 77, 80, 82, 85, 87.
- Kamrat-Lang, Debora. "Healing Society: Medical Language in American Eugenics." *Science in Context* 8 (1985): 175-96.
- Kett, Joseph F. "Women and the Progressive Impulse in Southern Education." In *The Web of Southern Social Relations: Women, Family, & Education*, eds. Walter J. Fraser, jr., R. Frank Saunders, jr., and Ron L. Wakelyn, 166-80. Athens, GA: The University of Georgia Press, 1985.
- Leys Stepan, Nancy. "Race, Gender, Science and Citizenship." *Gender and History* 10 (April 1998): 26-52.
- Lindquist Dorr, Lisa. "Arm in Arm: Gender, Eugenics, and Virginia's Racial Integrity Acts of the 1920s." *Journal of Women's History* 11 (Spring 1999): 143-166.
- Lombardo, Paul A. "Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom." *Journal of Contemporary Health Law and Policy* 13 (1996): 1-25.
- _____. "Miscegenation, Eugenics, and Racism: Historical Footnotes to *Loving v. Virginia*." *University of California, Davis Law Review* 21 (1988): 421-52.
- _____. "Three Generations, No Imbeciles: New Light on *Buck v. Bell*." *New York University Law Review* 60 (April 1985): 30-62.
- _____. "Involuntary Sterilization in Virginia: From *Buck v. Bell* to *Poe v. Lynchburg*." *Developments in Mental Health Law* 3 (1983): 13-14, 18-21.
- Love, Rosaleen. "'Alice in Eugenics Land': Feminism and Eugenics in the Scientific Careers of Alice Lee and Ethel Elderton." *Annals of Science* 36 (1979): 145-58.
- MacDowell, E. Carleton. "Charles Benedict Davenport, 1866-1944: A Study of Conflicting Influences." *Bios* 17 (March 1946): 3-50.

- Onuf, Peter S. "'To Declare Them a Free and Independent People': Race, Slavery, and National Identity in Jefferson's Thought." *Journal of the Early Republic* 18 (Spring 1998): 1-46.
- Pascoe, Peggy. "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America." *Journal of American History* (June 1996): 44-69.
- . "Race, Gender, and Intercultural Relations: The Case of Interracial Marriage." *Frontiers* 12 (1991): 5-18.
- Pauly, Philip J. "Summer Resort and Scientific Discipline: Woods Hole and the Structure of American Biology." In *The American Development of Biology*, eds. Ronald Rainger, Keith R. Benson, and Jane Maienschein. New Brunswick, N.J.: Rutgers University Press, 1988.
- Pernick, Martin S. "Eugenics and Public Health in American History." *American Journal of Public Health* 87 (November 1997): 1767-72.
- Proctor, Robert. "Eugenics Among the Social Sciences: Hereditarian Thought in Germany and the United States." In JoAnne Brown and David K. van Keuren, eds. *The Estate of Social Knowledge*. Baltimore and London: Johns Hopkins University Press, 1991.
- . "From *Anthropologie* to *Rassenkunde* in the German Anthropological Tradition," 138-79. In George W. Stocking, Jr., ed. *Bones, Bodies, and Behavior: Essays on Physical Anthropology*. Madison, Wisc.: University of Wisconsin Press, 1988.
- Provine, William B. "Geneticists and the Biology of Race Crossing." *Science* 182 (November, 1973): 790-96.
- Quantz, Richard. "Founding of the University of Virginia School of Education." *Occasional Paper Series in the Social Foundations of Education* 3 (April 1979): 1-15.
- Radford, John P. "Sterilization Versus Segregation: Control of the Feeble-minded, 1900-1938." *Social Sciences and Medicine* 33 (1991): 449-58.
- Rafter, Nicole H. "Claims-Making and the Socio-Cultural Context of the First U.S. Eugenics Campaign." *Social Problems* 39 (1992): 17-34.
- Reilly, Philip. "The Virginia Racial Integrity Act Revisited: The Plecker-Laughlin Correspondence: 1928-1930." *American Journal of Medical Genetics* 16 (1983): 483-92.
- Riddle, Oscar. "Biographical Memoir of Charles Benedict Davenport 1866-1944," *National Academy of Sciences Biographical Memoirs*, vol. 25. Washington, D.C.: National Academy of Sciences, 1948.
- Rossiter, Margaret. "'Woman's Work' in Science, 1880-1910," *Isis* 71 (1980): 381-89.
- Saks, Eva. "Representing Miscegenation Law." *Raritan* 8 (1988): 39-69.

- Selden, Steven. "Educational Policy and Biological Science: Genetics, Eugenics, and the College Textbook, c. 1908-1931," *Teachers College Record* 87 (Fall 1985): 42-51.
- Smith, Shawn Michelle. "'Baby's Picture is Always Treasured': Eugenics and the Reproduction of Whiteness in the Family Photograph Album." *Yale Journal of Criticism* 11 (1998): 197-220.
- Sommerville, Diane Miller. "The Rape Myth in the Old South Reconsidered." *Journal of Southern History* 61 (August 1995), 481-518.
- Wallenstein, Peter. "Race, Marriage, and the Law of Freedom: Alabama and Virginia, 1860s-1960s." *Chicago-Kent Law Review* 70 (1994): 371-437.
- Wechsler, Herbert. "Toward Neutral Principles of Constitutional Law," 3-48. In Herbert Wechsler, *Principles, Politics, and Fundamental Law*. Cambridge, Mass: Harvard University Press, 1961.
- White, G. Edward. "The Evolution of Reasoned Elaboration: Jurisprudential Criticism and Social Change." *Virginia Law Review* 59 (1973): 279-302.
- White, Robert M. "Unraveling the Tuskegee Study of Untreated Syphilis." *Archives of Internal Medicine* 160 (March 13, 2000): 34 pages.

Books:

- Adams, Mark B. *The Well-Born Science: Eugenics in Germany, France, Brazil, and Russia*. New York: Oxford University Press, 1990.
- Anderson, Eric and Alfred A. Moss, Jr. *Dangerous Donations: Northern Philanthropy and Southern Black Education, 1902-1930*. Columbia, Mo. and London: University of Missouri Press, 1999.
- Anderson, James D. *The Education of Blacks in the South 1860-1935*. Chapel Hill, N.C. and London: University of North Carolina Press, 1988.
- Ayers, Edward L. *The Promise of the New South: Life After Reconstruction*. New York and Oxford: Oxford University Press, 1992.
- Bailyn, Bernard. *The Ideological Origins of the American Revolution*. Enlarged ed. Cambridge, Mass. and London: The Belknap Press of Harvard University Press, 1992.
- Bannister, Robert C. *Social Darwinism: Science and Myth in Anglo-American Social Thought*. Philadelphia: Temple University Press, 1979.
- Barkan, Elazar. *The Retreat of Scientific Racism: Changing Concepts of Race in Britain and the United States between the World Wars*. Cambridge: Cambridge University Press, 1992.
- Bederman, Gail. *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917*. Chicago and London: University of Chicago Press, 1995.

- Benson, Keith R., Jane Maienschein, and Ronald Rainger, eds. *The Expansion of American Biology*. New Brunswick, N.J. and London: Rutgers University Press, 1991.
- Bledstein, Burton. *The Culture of Professionalism*. New York: W. W. Norton, Inc. 1976.
- Bloom, Jack M. *Class, Race, and the Civil Rights Movement*. Bloomington and Indianapolis, Ind.: Indiana University Press, 1987.
- Boaz, Noel T. and Linda D. Wolfe. *Biological Anthropology: The State of the Science*. Bend, Ore.: International Institute for Human Evolutionary Research, 1995.
- Bowler, Peter J. *The Mendelian Revolution: The Emergence of Hereditarian Concepts in Modern Science and Society*. Baltimore: Johns Hopkins University Press, 1989.
- . *Theories of Human Evolution: A Century of Debate, 1844–1944*. Baltimore: Johns Hopkins University Press, 1986.
- Bowles, Samuel and Herbert Gintis, *Schooling in Capitalist America: Educational Reform and the Contradictions of Economic Life*. New York: BasicBooks, 1976.
- Brandt, Allan M. *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880*. New York and Oxford: Oxford University Press, 1985.
- Braslow, Joel. *Mental Ills and Bodily Cures: Psychiatric Treatment in the First Half of the Twentieth Century*. Berkeley, Calif. and London: University of California Press, 1997.
- Broberg, Gunnar and Nils Roll-Hansen, eds. *Eugenics and the Welfare State: Sterilization Policy in Denmark, Sweden, Norway, and Finland*. East Lansing, Mich.: Michigan State University Press, 1996.
- Burke, Martin J. *The Conundrum of Class: Public Discourse on the Social Order in America*. Chicago: University of Chicago Press, 1995.
- Caudill, Edward. *Darwinian Myths: The Legends and Misuses of a Theory*. Knoxville, Tenn.: University of Tennessee Press, 1997.
- Cawley, Edward P. *A History of the Department of Dermatology: University of Virginia*. Privately Published, 1987.
- Chase, Alan. *The Legacy of Malthus: The Social Costs of the New Scientific Racism*. New York: Alfred A. Knopf, 1977.
- Clifford, Geraldine Joncich. *Edward L. Thorndike: The Sane Positivist*. 2d ed. Middletown, Conn.: Wesleyan University Press, 1984.
- Cohen, Nathan. *Culture of Intolerance: Chauvinism, Class, and Racism in the United States*. New Haven, Conn. and London: Yale University Press, 1998.

- Cravens, Hamilton. *The Triumph of Evolution: American Scientists and the Heredity-Environment Controversy 1900-1941*. Philadelphia: University of Pennsylvania Press, 1978.
- Curti, Merle. *The Social Ideas of American Educators*. New York: Charles Scribner's Sons, 1935.
- De Baecque, Antoine. *The Body Politic: Corporeal Metaphor in Revolutionary France, 1770-1800*. Translated by Charlotte Mandell. Stanford, Calif.: Stanford University Press, 1993.
- Degler, Carl N. *In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought*. New York and Oxford: Oxford University Press, 1991.
- Dumenil, Lynn. *The Modern Temper: America in the 1920s*. New York: Hill and Wang, 1995.
- Duster, Troy. *Backdoor to Eugenics*. New York and London: Routledge, 1990.
- Egerton, John. *Speak Now Against the Day: The Generation Before the Civil Rights Movements in the South*. New York: Alfred A. Knopf, 1994.
- Ehrenreich, Barbara and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women*. New York: Anchor Books/Doubleday, 1978.
- Ellis, Joseph J. *American Sphinx: The Character of Thomas Jefferson*. New York: , 1997.
- Fleming, Donald. *William H. Welch and the Rise of Modern Medicine*. Boston: Little, Brown and Company, 1954.
- Flexner, Simon and James Thomas Flexner. *William Henry Welch and the Heroic Age of American Medicine*. New York: The Viking Press, 1941; reprint, Baltimore and London: Johns Hopkins University Press, 1993.
- Foucault, Michel. *The Birth of the Clinic: An Archeology of Medical Perception*.
- Franklin, John Hope and Alfred A. Moss, Jr. *From Slavery to Freedom: A History of African Americans*. 7th ed. New York: McGraw-Hill, Inc., 1994.
- Fraser, Gertrude Jacinta. *African American Midwifery in the South: Dialogues of Birth, Race, and Memory*. Cambridge, Mass. and London: Harvard University Press, 1998.
- Frederickson, George M. *The Black Image in the White Mind: The Debate on Afro-American Destiny, 1817-1914*. New York: Harper & Row, Publishers, 1971.
- Gallagher, Nancy L. *Breeding Better Vermonters: The Eugenics Project in the Green Mountain State*. Hanover, N.H.: University Press of New England, 1999.
- Garrow, David J. *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade*. New York: MacMillan Publishing Company, 1994.

- Gaston, Paul M. *The New South Creed: A Study in Southern Mythmaking*. New York: Vintage Books, 1970.
- Gilbert, James. *Redeeming Culture: American Religion in an Age of Science*. Chicago: University of Chicago Press, 1997.
- Gossett, Thomas F. *Race: The History of an Idea in America*. 2d. ed., New York and Oxford: Oxford University Press, 1997.
- Gould, Stephen Jay. *The Mismeasure of Man*. 2d. ed. New York: W. W. Norton & Company, 1996.
- . *Time's Arrow, Time's Cycle: Myth and Metaphor in the Discovery of Geological Time*. Cambridge and London: Harvard University Press, 1987.
- . *Ever Since Darwin: Reflections in Natural History*. 4th ed. W. W. Norton & Company, 1977.
- Grantham, Dewey W. *The South in Modern America: A Region at Odds*. New York: HarperPerennial, 1994.
- Gunther, Gerald. *Learned Hand: The Man and the Judge*. New York: Alfred A. Knopf, 1994.
- Hale, Grace Elizabeth. *Making Whiteness: The Culture of Segregation in the South, 1890–1940*. New York: Pantheon Books, 1998.
- Hall, Jacqueline Dowd. *Revolt Against Chivalry: Jessie Daniel Ames and the Women's Campaign Against Lynching*. New York: Columbia University Press, 1974.
- Haller, Mark. *Eugenics: Hereditarian Attitudes in American Thought*. New Brunswick, N.J.: Rutgers University Press, 1963.
- Harris, Jonathan Gil. *Foreign Bodies and the Body Politic: Discourses of Social Pathology in Early Modern England*. London and New York: Cambridge University Press, 1998.
- Hasian, Marouf A., Jr. *The Rhetoric of Eugenics in Anglo-American Thought*. Athens, Ga.: University of Georgia Press, 1996.
- Haskell, Thomas L., ed. *The Authority of Experts: Studies in History and Theory*. Bloomington, Ind.: Indiana University Press, 1984.
- Heinemann, Ronald L. *Harry Byrd of Virginia*. Charlottesville, Va.: University Press of Virginia, 1996.
- Herrnstein, Richard J. and Charles Murray. *The Bell Curve: Intelligence and Class Structure in American Life*. New York: The Free Press, 1994.
- Higham, John. *Strangers in the Land: Patterns of American Nativism, 1860–1925*. 4th ed. New Brunswick, N.J.: Rutgers University Press, 1994.

- Hobson, Barbara Meil. *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition*. New York: BasicBooks, Inc., 1987.
- Hodes, Martha. *White Women, Black Men: Illicit Sex in the Nineteenth Century South*. New Haven: Yale University Press, 1997.
- Hofstadter, Richard. *The Age of Reform*. New York: Vintage Books, 1955.
- . *Social Darwinism in American Thought*. (Philadelphia: University of Pennsylvania Press, 1944).
- Horwitz, Morton J. *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy*. New York and Oxford: Oxford University Press, 1992.
- . *Social Darwinism in American Thought*. Revised ed. New York: George Braziller, Inc., 1959.
- Jones, James H. *Bad Blood: The Tuskegee Syphilis Experiment*. 2d. ed. New York: The Free Press, 1993.
- Jordan, Winthrop D. *White Over Black: American Attitudes Toward the Negro 1550-1812*. Chapel Hill, N.C. and London: University of North Carolina Press, 1968.
- Kelley, Robin D. G. *Race Rebels: Culture, Politics, and the Black Working Class*. New York: The Free Press, 1994.
- Kett, Joseph F. *The Formation of the American Medical Profession: The Role of Institutions, 1780-1860*. New Haven, Conn. and London: Yale University Press, 1968; reprint, Westport, Conn.: Greenwood Publishers, 1980.
- Keve, Paul W. *A History of Corrections in Virginia*. Charlottesville, Va.: University Press of Virginia, 1986.
- Kevles, Daniel J. *In the Name of Eugenics: Genetics and the Uses of Human Heredity*. New York: Alfred A. Knopf, 1985.
- Kevles, Daniel J. and Leroy Hood, eds. *The Code of Codes: Scientific and Social Issues in the Human Genome Project*. Cambridge and London: Harvard University Press, 1992.
- Kluger, Richard. *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*. New York: Vintage Books, 1975.
- Kolchin, Peter. *American Slavery 1619-1877*. New York: Hill and Wang, 1993.
- Kraut, Alan M. *Silent Travelers: Germs, Genes, and the 'Immigrant Menace'*. New York: BasicBooks, 1994.
- Kuhn, Thomas S. *The Structure of Scientific Revolutions*. 3d ed. Chicago and London: University of Chicago Press, 1996.

- Kunzel, Regina G. *Fallen Woman, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890-1945*. New Haven, Conn. and London: Yale University Press, 1993.
- Lacqueur, Thomas. *Making Sex: Body and Gender from the Greeks to Freud*. Cambridge, MA and London: Harvard University Press, 1990.
- Larson, Edward J. *Summer of the Gods: The Scopes Trial and America's Continuing Debate Over Science and Religion*. New York: BasicBooks, 1997.
- . *Sex, Race, and Science: Eugenics in the Deep South*. Baltimore and London: Johns Hopkins University Press, 1995.
- Lederer, Susan E. *Subjected to Science: Human Experimentation in America before the Second World War*. Baltimore and London: Johns Hopkins University Press, 1995.
- Link, Arthur S. and Richard L. McCormick, *Progressivism*. Arlington Heights, Ill.: Harlan Division, Inc., 1983.
- Link, William A. *The Paradox of Southern Progressivism, 1880-1930*. Chapel Hill, N.C. and London: University of North Carolina Press, 1992.
- Lott, Eric. *Love and Theft: Blackface Minstrelsy and the American Working Class*. Oxford and New York: Oxford University Press, 1995.
- Ludmerer, Kenneth M. *Genetics and American Society: A Historical Appraisal*. Baltimore and London: Johns Hopkins University Press, 1972.
- Maienschein, Jane. *Transforming Traditions in American Biology, 1880-1915*. Baltimore and London: Johns Hopkins University Press, 1991.
- Meckel, Richard A. *Save the Babies: American Public Health Reform and the Prevention of Infant Mortality, 1850-1929*. Baltimore and London: Johns Hopkins University Press, 1990.
- Mennel, Robert M. and Christine L. Compston, eds. *Holmes and Frankfurter: Their Correspondence, 1912-1934*. Hanover: University Press of New England, 1996.
- Mills, Charles W. *The Racial Contract*. Ithaca, N.Y. and London: Cornell University Press, 1997.
- Morgan, Edmund S. *American Slavery, American Freedom: The Ordeal of Colonial Virginia*. New York: W. W. Norton & Company, 1975.
- Murray, Pauli, ed. *States' Laws on Race and Color*. Athens, Ga. and London: The University of Georgia Press,
- Noll, Steven. *Feeble-Minded in Our Midst: Institutions for the Mentally Retarded in the South, 1900-1940*. Chapel Hill, N.C. and London: University of North Carolina Press, 1995.

- Numbers, Ronald L. *Darwinism Comes to America*. Cambridge and London: Harvard University Press, 1998.
- Odem, Mary E. *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920*. Chapel Hill, N.C. and London: University of North Carolina Press, 1995.
- Otis, Laura. *Membranes: Metaphors of Invasion in Nineteenth-Century Literature, Science, and Politics*. Baltimore and London: Johns Hopkins University Press, 1999.
- Pastore, Nicholas. *The Nature-Nurture Controversy*. New York: Kings Crown Press, 1949; reprint, New York and London: Garland Publishing, Inc., 1984.
- Paul, Diane B. *The Politics of Heredity: Essays on Eugenics, Biomedicine, and the Nature-Nurture Debate*. Albany, N.Y.: State University of New York Press, 1998.
- . *Controlling Human Heredity, 1865 to the Present*. Atlantic Highlands, N.J.: Humanities Press International, Inc., 1995.
- Purcell, Edward A., Jr. *The Crisis of Democratic Theory: Scientific Naturalism & the Problem of Value*. Lexington, Ky.: University of Kentucky Press, 1973.
- Pernick, Martin S. *The Black Stork: Eugenics and the Death of 'Defective' Babies in American Medicine and Motion Pictures Since 1915*. New York and Oxford: Oxford University Press, 1996.
- Pickens, Donald K. *Eugenics and the Progressives*. Nashville, Tenn., Vanderbilt University Press, 1968.
- Rabinow, Paul. ed. *The Foucault Reader*. New York: Pantheon Books, 1984.
- Rafter, Nicole Hahn. *Creating Born Criminals*. Urbana, Ill. and Chicago: University of Illinois Press, 1997.
- . ed. *White Trash: The Eugenic Family Studies, 1877-1919*. Boston: Northeastern University Press, 1988.
- Reilly, Philip R. *The Surgical Solution: A History of Involuntary Sterilization in the United States*. Baltimore and London: Johns Hopkins University Press, 1991.
- Robitscher, Jonas. *Sterilization*. Springfield, Ill.: Thomas, 1973.
- Roediger, David R. *Towards the Abolition of Whiteness: Essays on Race, Politics, and Working Class History*. London and New York: Verso, 1994.
- . *The Wages of Whiteness: Race and the Making of the American Working Class*. London and New York: Verso, 1991.
- Rose, Michael R. *Darwin's Spectre: Evolutionary Biology in the Modern World*. Princeton, N.J.: Princeton University Press, 1998.

- Rosen, Ruth. *The Lost Sisterhood: Prostitution in America, 1900-1918*. Baltimore and London: Johns Hopkins University Press, 1982.
- Ross, Dorothy. *Modernist Impulses in the Human Sciences 1870-1930*. Baltimore and London: Johns Hopkins University Press, 1994.
- . *The Origins of American Social Science*. Cambridge and New York: Cambridge University Press, 1991.
- Scott, Daryl Michael. *Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche 1880-1996*. Chapel Hill, N.C. and London: University of North Carolina Press, 1997.
- Selden, Steven. *Inheriting Shame: The Story of Eugenics and Racism in America*. New York and London: Teachers College Press, 1999.
- Sitkoff, Harvard. *The Struggle for Black Equality, 1954-1992*. revised edition. New York: Hill and Wang, 1993.
- Smith, J. David. *The Eugenic Assault on America: Scenes in Red, White and Black*. Fairfax, Va.: George Mason University Press, 1993.
- Smith, J. David and K. Ray Nelson. *The Sterilization of Carrie Buck: Was She Feeble-minded or Society's Pawn*. Far Hills, N.J.: New Horizon Press, 1989.
- Smith, Susan L. *Sick and Tired of Being Sick and Tired: Black Women's Health Activism in America, 1890-1950*. Philadelphia: University of Pennsylvania Press, 1995.
- Solomon, Barbara Miller. *Ancestors and Immigrants: A Changing New England Tradition*. Cambridge, Mass.: Harvard University Press, 1956.
- Soloway, Richard A. *Demography and Degeneration: Eugenics and the Declining Birthrate in Twentieth-Century Britain*. 2d ed. Chapel Hill, N.C. and London: University of North Carolina Press, 1995.
- Spencer, Frank. ed. *A History of American Physical Anthropology 1930-1980*. New York: Academic Press, 1982.
- Stamp, Kenneth M. *America in 1857: A Nation on the Brink*. New York and Oxford: Oxford University Press, 1990.
- Stanton, William. *The Leopard's Spots: Scientific Attitudes Toward Race in America 1815-59*. Chicago and London: University of Chicago Press, 1960.
- Stepan, Nancy Leys. *"The Hour of Eugenics": Race, Gender, and Nation in Latin America*. Ithaca, N.Y. and London: Cornell University Press, 1991.
- Stocking, George W., Jr. *Bones, Bodies, Behavior: Essays on Biological Anthropology*. Madison, Wisc.: University of Wisconsin Press, 1988.

- Stubbe, Hans. *History of Genetics: From Prehistoric Times to the Rediscovery of Mendel's Laws*. Translated by T. R. W. Waters. Cambridge and London: MIT Press, 1972.
- Tindall, George B. *The Emergence of the New South 1913-1945*. Baton Rouge, La.: Louisiana State University Press, 1967.
- Trent, James W., Jr. *Inventing the Feeble Mind: A History of Mental Retardation in the United States*. Berkeley, Calif. and London: University of California Press, 1994.
- Urofsky, Melvin. *Felix Frankfurter: Judicial Restraint and Individual Liberties*. Boston: Twayne Publishers, 1991.
- Veysey, Laurence R. *The Emergence of the American University*. Chicago: University of Chicago Press, 1965.
- Walters, Ronald G. ed. *Scientific Authority and Twentieth-Century America*. Baltimore and London: Johns Hopkins University Press, 1997.
- Washington, Joseph R., Jr. *Marriage in Black and White*. Boston: Beacon Press, 1970.
- Wells, H. G. *A Modern Utopia*. New York and London: Chapman and Hall; reprint ed. Lincoln, Neb. and London: University of Nebraska Press, 1967.
- Whitman, Mark. ed. *Removing a Badge of Slavery: The Record of Brown v. Board of Education*. Princeton, N.J. and New York: Markus Wiener Publishing, Inc., 1993.
- Wiebe, Robert H. *The Search for Order 1877-1920*. New York: Hill and Wang, 1967.
- Williamson, Joel. *The Crucible of Race: Black-White Relations in the American South Since Emancipation*. New York and Oxford: Oxford University Press, 1984.
- Wills, Gary. *Inventing America: Jefferson's Declaration of Independence*. New York: Doubleday and Company, Inc., 1978; reprint ed., New York: Vintage Books, 1979.
- Woodward, C. Vann. *The Strange Career of Jim Crow*. 3d ed. New York: Oxford University Press, 1974.
- _____. *Origins of the New South 1877-1913*. Baton Rouge, La.: Louisiana State University Press, 1951.
- Zenderland, Leila. *Measuring Minds: Henry Herbert Goddard and the Origins of American Intelligence Testing*. Cambridge: Cambridge University Press, 1998.