Marriage and Madness

Expert Advice and the Eugenics Issue in 20th Century Norwegian Marriage Legislation

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This essay focuses on marriage regulation as a eugenic tool – a topic that has received little attention in the literature – in 20th century Norway. Although eugenics was very much the focus of expert discussions prior to the first Norwegian marriage act (1918), a marriage bar for the insane that was included in the act was not mainly motivated by eugenic concerns. In fact, an amendment prepared in the late 1950s brought such concerns more to the foreground. In a final round of revisions prepared in the 1970s and 80s, however, both the marriage bar and the eugenic arguments were firmly dismissed. The essay uses these developments to discuss the relative weight to be accorded technical versus political factors in explaining the decline of eugenics – a decline that came rather late as far as the history of Norwegian marriage laws goes.

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The history of eugenics in the Scandinavian countries has received much attention from historians of science in the last couple of decades. Much of the literature (e.g. Broberg and Roll-Hansen, 1995) has focused on the more dramatic measures of eugenic policies, in particular sterilizations. There may be a number of reasons for such a focus: the eugenic movement itself always emphasised sterilization; sterilization was also apparently one of the movement's biggest successes (in terms, for instance, of the number of sterilization laws passed around the world); and (involuntary) sterilization seems to be very much at odds with our present emphasis on reproductive freedom. However, although it is well known that the eugenic movement of the twentieth century also pro-

moted other means to further its goal of "bettering the human race", not all of these have received due attention in the literature. The present paper addresses one much-ignored part of the history of eugenics in Norway, namely the role of eugenic arguments in the Norwegian marriage legislation. As will be shown, eugenics was a major issue within this area through large parts of the 20th century – perhaps even more so here than in the sterilization legislation.

The history of the marriage legislation also bears on the contested issue of the role of scientific developments in the decline of eugenics. I will argue that scientific developments were more instrumental than is often assumed. The issue will be addressed in the concluding section, by way of a discussion of the relative importance of scientific and political factors. The first three sections, however, recount the major legislative events in the history of the Norwegian marriage laws.

The First Norwegian Marriage Law

Preparations for the first Norwegian marriage act began in November 1909 when representatives from Denmark, Sweden and Norway met to consider the case for a coordination of family law in these three closely related Scandinavian countries. One of the areas that were identified as suitable for such coordination was the regulation of marriages. A long and complex preparatory process followed, effectively involving several months of round table negotiations between delegates as well as extensive discussions in medical societies on the national level. Finally, after many years of preparations and negotiations, similar marriage acts were passed in Sweden (1915), Norway (1918), and Denmark (1922).

One of the issues that received much attention in the Norwegian part of the preparatory process was marriages in which one or both spouses suffered from psychiatric conditions. Historically, such marriages had been prohibited for several hundred years. The reason for the prohibition was of a technical-legal nature: insane persons were considered irrational, whereas only rational persons could give a legally binding consent. As it turned out, this reasoning went unchallenged through the preparations for a new marriage act, so the new Norwegian act of 1918 affirmed the existing marriage bar for the insane (as did the Swedish and Danish laws). However, an additional motive for marriage prohibitions was introduced in the Norwegian medico-legal debate prior to the act of 1918: eugenics – or racial hygiene, which was the more common term in Norway at the time.

The first to present a "Program for racial hygiene" in Norway was the pharmacist and politician Jon Alfred Mjøen (1860-1939). This happened at a meeting in Oslo in 1908, prompted, as Mjøen later recalled, by "Ernst Rüdin's inspiring visit to Norway in 1907" (Mjøen, 1938:270). Among various measures ranging from segregation of the feebleminded to bans on "chemical poisons" such as alcohol, Mjøen's rather broad political program also called for "Health declarations prior to marriage". For Mjøen, this meeting was to be the start of a life-long campaign for eugenics and social reform that would result in a few successes but more failures (see Roll-Hansen, 1995). As for eugenic marriage

measures, he did actually manage to place his proposal on the political agenda. Thus, when the Medical Society of Oslo in 1911 discussed "Marriage bars from a medical point of view", as part of the preparatory process for a new marriage act, Mjøen's proposal for health declarations before marriage was one of the focal points of the debate.

The Medical Society in Oslo was primarily a discussion forum for members of the medical profession. It was to this society, in fact, that Mjøen had presented his eugenic program in 1908. On this particular occasion in May 1911, however, the Society's function was more like that of an advisory board, since the meeting was specifically arranged to answer ministerial needs for medically informed opinions on the forthcoming marriage law. The discussion touched upon several topics, including legal age, consanguinity, and venereal diseases. However, the issue that received most attention from the Society – perhaps because the psychiatrists were heavily represented – was insanity (which, according to the terminology of the day, included mental retardation).

All participants in the discussion – psychiatrists and non-psychiatrists alike – seemed to agree that there should be an absolute bar on marriage in cases of patent insanity, and that some sort of health examination should be mandatory in cases of doubt. The primary reason for this position was also shared among most of the discussants: patent insanity excluded the possibility of a valid consent (according to this reasoning, the prohibition was actually a protection of the rights of the insane). A more controversial issue was whether eugenic considerations should be included among the motives for the marriage bar. If they should, the bar would have to be higher, excluding the recovered insane as well as the patently insane. A majority was sceptical of the validity of such a eugenic argument. The director of the health bureaucracy, Michael Holmboe, argued in his opening speech that a eugenic marriage prohibition would have to target more than *patent* insanity (Medical Society, 1911:6). According to Holmboe, eugenic considerations would require psychiatric examinations of, and possibly marriage prohibitions for, everyone with a family history of psychiatric diseases. But, Holmboe argued, such an extensive eugenic prohibition would be premature:

> Our knowledge of the laws of heredity is too incomplete, and our ability to estimate chances for the fate of the offspring in each case is too poor. The old theory of Morel on progressive degeneration must be regarded as refuted by later experience; we know that even a very unhealthy family may produce healthy offspring, and that such a family through the introduction of healthy blood may more or less free itself from the morbid disposition (Medical Society, 1911: 7).

Most participants in the discussion, the psychiatrists in particular, seemed to agree with Holmboe. Ragnar Vogt, who later became the first Norwegian professor of psychiatry, argued that contraception, not marriage, was the proper target for eugenics. From a eugenic point of view, therefore, other measures than marriage prohibitions would be appropriate. And although Vogt was generally quite positive to eugenics, he shared Holmboe's worries about the prematurity of eugenic measures:

> Personally, I support racial hygienic interests; I do not see any other radical way to prevent insanity, alcoholism, crime etc., but we will have to proceed very carefully – if not for any other reason, then at least because of our ignorance in this field (Medical Society, 1911: 82).

Even Johan Scharffenberg, a practicing psychiatrist and normally an enthusiastic public proponent for eugenics, admitted that the scientific case for a eugenic marriage law was still weak. Although Scharffenberg strongly defended society's right to limit individual reproductive freedom, the enactment of eugenic laws would still have to wait:

> We are apparently just now starting to get firm ground beneath our feet in hereditary theory, and I hope that we one day will employ very radical deterrent measures to prevent bad racial elements from propagating, and encourage good ones. But the time is not yet ripe; racial hygienists will still for a long time have to be content with pursuing research and arousing people's feeling of responsibility through public enlightenment (Medical Society, 1911: 29).

Thus both Vogt and Scharffenberg, two of the most influential figures in Norwegian psychiatry at the time, concluded that eugenics should play no role in the formulation of a marriage law.

None of the participants in the discussion really challenged this conclusion, although not everyone was as enthusiastic about the future possibilities of eugenics as the psychiatrists were. For instance, the director of the Norwegian veterinarian authority, Ole Olsen Malm, claimed that Mendelism, for which the psychiatrists had made a strong case, so far had not been of any use for the study of human heredity (Medical Society, 1911: 40). As for the eugenic ideals, Malm characterised them as unfeasible: who was to decide which traits to select and how far should perfection be sought (Medical Society, 1911: 20)? So Malm remained a strong opponent of any eugenic marriage law, present or future. Thus, when director Holmboe concluded the discussion with the following statement, he spoke for most of the Medical Society:

> Marriage is an area with which legislation only very cautiously should interfere, and the so-called racial hygienic considerations, in particular, are unfit as a foundation for laws in our present state of knowledge (Medical Society, 1911: 45).

What was the "state of knowledge" on which Holmboe and the Medical Society built their conclusions? First of all, with the exception of the veterinarian Ole Malm, the Mendelian principles were widely recognised. Several of the participants in the discussion expressed the view that Mendelism had replaced and refuted Morel's idea of a general degenerating tendency in the human race, and thereby finally cleared the ground for a proper study of human heredity. Part of the explanation for this wide acceptance of a theoretical framework that was still much debated in western medicine and science (see, for instance, Provine, 1971) is probably the influence of the leading psychiatrists, several of whom were strong advocates of Mendelism. Ragnar Vogt had recently held a lecture before the society on "Hereditary diseases in the light of Mendelism" (Vogt, 1911), a lecture to which many of the participants referred approvingly. Another influential figure in Norwegian turn-of-the-century psychiatry, Hans

Evensen, had just published a "Critique of the degeneration theory" (Evensen, 1911), a critique that apparently also was widely recognised. However, Malm's claim that Mendelism so far had not been demonstrated for human traits remained a worry for many of the participants. For Malm, Mendel's laws were hard to apply to humans, both because of "complicating social factors" as well as the general complexity of human heredity: "The heredity of human traits is not like mixing red and white peas" (Medical Society, 1911: 40). Very few approved these principal objections of Malm's, but quite a few noted the lack of demonstrations of the Mendelian laws on humans (although Vogt had attempted to provide such a demonstration for the case of manic-melancholic insanity in 1910). A professor of gynaecology, Kristian Brandt, claimed to have "great respect" for the Mendelian laws, but for the study of human heredity, they were yet to be regarded as "working hypotheses" (Medical Society, 1911:28). For some, this feeling of ignorance also extended to the question of human heredity in general, Mendelian or not. For instance, Asylum Director Henrik Dedichen pointed out that eugenicists thus far were incapable of pointing out a singular disease that invariably would affect the offspring (Medical Society, 1911: 18).

Still, a majority thought that the Mendelian laws would eventually prove themselves valuable for studies of human heredity. The temporary lack of applications of the laws on humans was explained by Scharffenberg as due to the short time that had lapsed since the rediscovery of Mendel. For Scharffenberg, the Mendelian laws were self-evidently true for non-human species, and he was willing to embrace them "a priori" for cases of human heredity (Medical Society, 1911: 31). He was also convinced that insanity in general, and feeble-mindedness specifically, were highly heritable conditions. To support this view, he referred to "several of the works of the Galton Laboratory" (Medical Society, 1911: 30) as well as "Henry H. Goddard's works from Vineland, New Jersey" (Medical Society, 1911:4 4). These scattered references in fact remained the only citations of empirical work concerning the heredity of insanity that were made during the meeting in the Medical Society.

Another axis of conflict in the debate in the Medical Society concerned the individual and collective rights involved in a marriage prohibition. Again, Malm and Scharffenberg were the chief adversaries. Malm strongly criticised what he saw as a contemporary trend towards state legislation over individual rights. According to Malm,

> Every individual has the right to demand the greatest possible happiness in the short life that is granted him on earth, and this right may only be reduced when it threatens the happiness of others (Medical Society, 1911: 20).

Malm used this happiness principle to defend the family as a unit (not each individual; Malm scorned the women's rights movement) against governmental interference. Scharffenberg, on the contrary, argued that society's duty to take care of the feebleminded and insane warranted its right to prevent the birth of their children. In general, he claimed,

> We need a reaction against the individualistic perspective on sexual relations, the view that this relation only concerns the husband and wife to be...

> a marriage is a union of two families, not only between two separate individuals (Medical Society, 1911:29).

At least one other discussant, Asylum Director Dedichen, emphasised society's right to ensure the rationality and responsibility of those wanting to marry (Medical Society, 1911:18). However, the general feeling in the Medical Society was that the institution of marriage belonged to the realm of personal affairs, and, consequently, that it should not be interfered with unduly. Quite a few of the speakers – including Ragnar Vogt – emphasised the private and sensitive character of the matter. The almost unanimous vote of the Medical Society, then, judged that an interference with the right to marry would have to be better justified than eugenics at that time could provide.

The report from the meeting in the Medical Society was sent to the Ministry of Justice in June 1911, and eventually formed the medical basis for the Ministry's law proposal. The two lawyers who prepared the proposal in the Ministry accepted the conclusions of the Society and proposed a bar on marriages among the insane, but, apart from cases of doubt, they did not propose mandatory health declarations. The primary reason for the bar was, as argued by the Medical Society, the lack of legal competence that allegedly followed from insanity. But the proposal went somewhat further than the Medical Society in employing eugenic arguments. Whereas the Society in effect had rejected any use of eugenic considerations in the marriage law, the proposal referred to eugenics as an additional argument for the marriage bar:

> For several insanities there is a strong probability that they may be transferred to the offspring, if not directly, then at least through the inheritance of a disposition for insanity. This societal concern is so important that it warrants the exclusion from marriage of everybody suffering from insanity, even if there may be singular cases in which marriage would not damage or burden the insane part or his spouse (Family Law Committee, 1917: 48).

So these two lawyers employed by the Ministry of Justice were clearly more willing to employ eugenic arguments than were the experts of the Medical Society. The question is, why? Two lawyers would hardly have challenged the weight of the medical expertise on their own. However, the lawyers were very much involved with the Scandinavian family law coordination process, and this may partly explain their somewhat warmer attitude towards eugenics. In their proposal, they noted that, although the Norwegian, Swedish, and Danish marriage prohibitions were almost identically formulated, the medical arguments employed in Sweden and Denmark were different from those of the Norwegian Medical Society. In Sweden, the Medical Authority had disputed the claim that insanity always implied lack of legal competence, and instead justified the marriage bar for the insane with eugenic arguments. According to the Norwegian lawyers, racial hygienic concerns were "heavily weighted" by the Swedish psychiatric authorities (Family Law Committee, 1917: 50). In Denmark, the medico-legal advisory committee had proposed a mandatory bar on marriages for the insane and the feebleminded, because of the high degree to which these conditions were inherited. Thus, the

medical experts in both Sweden and Denmark were clearly more positive towards eugenics than their Norwegian colleagues, and this may have influenced the preparations for the Norwegian law. There is also the possibility, albeit invisible in the historical record, that eugenic lobbyists like Jon Alfred Mjøen had an influence. Mjøen himself later recounted the final Marriage Act of 1918 as a victory for his cause (Mjøen, 1938: 219).

The proposal went largely unchanged through both Ministry and parliament. The Ministry did not comment on either the proposed marriage prohibition or its medical justification. In parliament, however, a representative from the Liberal Left Party, MD and Asylum Director Karl Wilhelm Wefring, strongly cautioned against the use of eugenic considerations. His main argument was very much the same as the one used by his fellows in the Medical Society: Research on human heredity was still immature, and legislation should only be based on sound scientific results. The spokesman for the law proposition, Johan Castberg, commented that from a eugenic point of view one could have wished for mandatory health declarations as a safeguard against hereditary diseases, but that the committee "dared not" propose such an "extreme rule". Apart from these comments, the issue of eugenics received little attention from parliament. The law was passed as proposed in the spring of 1918, with the following section 5: "He, who is insane, may not marry."

The Revision of the Marriage Law

Although the family law coordination effort of the 1910s had been successful in many ways (notably for medical marriage prohibitions), many discrepancies between the Scandinavian countries remained. By the 1950s, national amendments had added new divergences. Several Inter-Scandinavian bodies (which by now included Finnish representatives) therefore proposed new marriage law coordination efforts, and the authorities followed suit. Once again the preparatory process that followed was quite complex. Several different committees were involved. In Norway, the question of marriage bars for the mentally ill and retarded was prepared by a separate committee, headed by professor of law Carl Jacob Arnholm. However, the arguments of the committee report were for the most part formulated by the psychiatrist Ørnulv Ødegård (1901-1986). Ødegård, a former student of Ragnar Vogt, was at the time director of the main Norwegian state asylum at Gaustad, and professor of psychiatry at the University of Oslo. The third member of the committee was a journalist, Ragna Hagen.

The report of the Arnholm committee, issued in 1959, proposed a new § 5, according to which insane persons, the mentally retarded, and drug addicts would not be allowed to marry without permission from the government. The permission could, according to the proposal, be made dependent on the person's willingness to submit him or herself to sterilization (a proviso that was already implemented in the Danish legislation). The proposal thus differed from the marriage act of 1918 in several respects. First, the proposed prohibition targeted a broader group of conditions, including drug addicts and lighter cases of mental retardation. Second, the com-

mittee proposed a dispensatory option. Third, this option was linked to sterilization. The committee's justification for these regulations, stated in a supplement to the committee report, was largely eugenic.

The supplement was entitled "The regulation of marriage on medical grounds, considered from a psychiatric point of view" and was written by Ødegård (Arnholm Committee, 1959:13-23). The whole committee explicitly supported it, however. In the supplement, Ødegård first described how the emphasis in the nature/nurture issue in psychiatry had swung back and forth through time, sometimes placing too much weight on the one, sometimes on the other. Ødegård saw this in relation to the situation in therapy. In the early 20th century, he claimed, poor results from therapy had motivated a strong belief in hereditarianism and fuelled the popular eugenics movement. At the time of his writing (the late 1950s), however, the new possibilities for medical treatment, together with the influence from psychoanalysis, had resulted in "a tendency to underestimate what may be achieved by eugenic measures" (Arnholm Committee, 1959:14). Then followed the essence of his argument:

> Modern genetics has given us the means to calculate how large an (eugenic) effect one may expect. Although the assumptions necessarily must be somewhat simplified, the numbers on the whole still give the right impression. Several scholars (among them v. Hofsten in Sweden) have calculated the effect of preventing patients with schizophrenia (our most common form of insanity) from breeding, for instance by sterilization. The results show that if one systematically could prevent all schizophrenics from breeding *in seven generations, the occurrence of the disease would be halved*. Admittedly, we would have had to prevent many of the patients from breeding several years before the symptoms appeared – a practical impossibility. But the calculation still illustrates that the eugenic effect is real. Whether it be counted as important or not is a matter of judgment – and of how effective measures and how long periods one wants to take into consideration (Arnholm Committee, 1959: 14, emphasis in original).

To emphasise the importance of this effect, Ødegård referred to a calculation done by the Medical Research Council of Britain in 1956 on the possible effect of nuclear radiation on the occurrence of schizophrenia (and other hereditary diseases) in the population. In a time very much focused on the detrimental effects of nuclear radiation, such a comparison was probably not without rhetorical effect:

> This calculation makes the same simplified assumptions as that of the sterilization calculation. Here, *an increase of seven percent in seven generations* is rightly regarded as important. But then there is no good reason for not counting the decrease in the incidence of disease through eugenic measures as equally important (Arnholm Committee, 1959: 14, emphasis in original).

Ødegård concluded his argument by pointing to the fact that Scandinavian acts relating to abortion and sterilization already included "eugenic clauses". When such serious measures were justified on eugenic grounds, Ødegård claimed, eugenic marriage prohibitions should be regarded as equally well justified.

The centrepiece of Ødegård's argument was a calculation by Nils von

Hofsten, a zoologist and advisor for the Swedish government on questions concerning "race biology". von Hofsten had discussed the "eugenic effect" in a number of articles (for instance, von Hofsten, 1944; 1951; 1963). In a paper entitled "The genetic effect of negative selection in man", he presented numerous tabulations showing the calculated effect of "negative selection" (for all practical purposes, sterilization) under varying assumptions (von Hofsten, 1951). The assumptions included different modes of Mendelian heredity, different initial frequencies, and different degrees of selection. Another paper from 1944 explicitly discussed the case of schizophrenia and claimed, among other things, that the disease probably was due to "two or more heredity factors, among them certainly at least one dominant and probably at least one recessive" (von Hofsten, 1944: 180). Ødegård, who had argued for a "polygenic" model of the inheritance of schizophrenia at the 1st International Congress of Psychiatry (Paris, 1950), was probably impressed by calculations showing that complex genetics did not necessarily rule out eugenic reasoning.

However, the practical implications of von Hofsten's calculations were far from clear. Von Hofsten himself, who focused on sterilization rather than marriage bars, was actually sceptical about the possibility of reducing the frequency of insanity:

> When it comes to hereditary insanity and epilepsy one cannot, as we have seen, hope for any decrease in the morbidity through sterilizing the ill (von Hofsten, 1944: 182).

As regards schizophrenia in particular, von Hofsten offered two main reasons for this conclusion. First, the fertility of schizophrenics was much lower than that of the general population, perhaps only 50%. This would work to pre-empt the effect of sterilization, making "artificial" selection superfluous. Second, many schizophrenics had children before the onset of the disease, thereby reducing the effect of sterilization.

One of the international authorities on the genetics of schizophrenia at the time, Franz J. Kallmann, would agree with von Hofsten's conclusion. Kallmann was an active eugenicist, but his study of the families of 1,087 schizophrenics (published in 1938) made him doubt that sterilization was justified for that disease. As an interesting aside, Kallmann's position on this issue had been radically different only three years earlier. Criticizing the Nazi sterilization law for not being wide enough in its scope, he then had claimed,

> It is desirable to extend prevention of reproduction to relatives of schizophrenics who stand out because of minor anomalies, and, above all, to define each of them as being undesirable from the eugenic point of view at the beginning of their reproductive years (quoted from Müller-Hill, 1988: 11).

Shortly thereafter, however, he was forced to leave Nazi-Germany because of his Jewish ancestry.

Unlike von Hofsten and Ødegård, Kallmann in 1938 thought that the predisposition for schizophrenia was inherited as a simple Mendelian recessive (a conviction that would only grow stronger after his famous twin studies to which I will return in the next section). But Kallmann was well aware of the low fertility of schizophrenics (stated to be

1.6 per marriage below the average of the general population in Kallmann's 1938 study) as well as the fact that most of their children were born prior to the onset of the disease (only 30.2 per cent of the children of his probands were born after the parent's first internment in an institution, according to Kallmann, 1938: 260). Thus Kallmann concluded,

> In the sterilization of schizophrenics the results do not justify the means. The expediency of this drastic technique cannot be maintained (Kallmann, 1938: 263).

But for less drastic techniques like marriage regulations, Kallmann's position hardly differed from Ødegård's:

> It would be advisable to make marriage counsel and health certificates obligatory for all couples applying for marriage licenses. Such an extensive eugenic program presupposes a systematic genetic training for physicians, teachers and social workers, a biological education for adolescents in the schools and the establishment of State archives of the tainted families (Kallmann, 1938: 268).

In Norway, such an archive actually existed, in the form of a central register of all persons admitted to Norwegian psychiatric institutions since 1916, and it was administered by Ødegård.

So Ødegård's recommendations of 1959 may have been inspired by Kallmann's conclusion. As a leading psychiatrist with interests in genetics, Ødegård no doubt knew Kallmann's book (in fact, the two almost certainly met at the 1st International Congress of Psychiatry in 1950, where they both delivered speeches). He may also have read Kallmann's chapter on "The Genetics of Mental Illness" in the three-volume American Handbook of Psychiatry, which was published the same year as Ødegård wrote the appendix. Although expressed in less specific terms, Kallmann's eugenic worries as expressed in the Handbook had not changed much since his 1938 book (see Kallmann, 1959:191-192), and by now he was definitely established as the internationally leading expert on the genetics of schizophrenia.

Ødegård's argument met very little opposition from contemporary Norwegian psychiatrists, although some of his conclusions were disputed. The proposed marriage prohibition for drug addicts was opposed by several parties, in particular in the other Scandinavian countries, and was eventually omitted from the Ministry of Justice's proposal. As for the prohibition for the insane and the retarded, most of the discussion centred on issues related to nomenclature and terminology, as the various countries had somewhat differing traditions. The terminology favoured by the Norwegian committee was apparently somewhat looser and more inclusive than that of the other Scandinavian countries. Ødegård's eugenic argument, however, hardly received any attention at all. One single district psychiatrist, Ole Petter Lossius, argued against any marriage bar for the mentally ill and retarded:

> If the intention of the law is to prevent certain persons from propagating, I think the effect [of legal marriage bars] is minimal, it will only cause these from a social point of view unwanted children to be born out of wedlock... I can therefore not support marriage prohibitions based on mental conditions and I would also recommend that the existing prohibitions be abandoned (Ministry of Justice, 1968: 14).

Lossius' objection was briefly mentioned, but not really heard, by the Ministry in their final proposal of 1968. However, by that time several things had changed. Twin studies published throughout the 1960s, several of which originated in Scandinavia, had questioned Kallmann's high heritability figures (see next section), and eugenics was no longer a fashionable term, to say the least. Ødegård gave a "supplementary" statement in January 1968 in which he acknowledged the new results from twin studies and admitted that one could not expect to see any measurable effect of legal marriage bars on the population gene pool. However, apart from Lossius' objection, neither Ødegård himself, nor anybody else, questioned the eugenic principle. At that time, Ødegård was still enormously influential – both among psychiatrists and authorities – and Lossius' time was still to come, as we shall see in the next section.

Still, the original proposals of the Arnholm committee had been extensively altered in the ten-year process that led up to the Ministry's final proposal. The category of diseases subject to the marriage bar was narrowed down so that only insane persons and mentally defectives with an IQ below 56 were prohibited from marrying (whereas the Arnholm proposal also included mild mental retardation, IQ 56-75, in the prohibition). Also, the much debated sterilization proviso proposed by the committee was left out of the final proposal. Thus, apart from the new dispensation provision, the 1969 amendment to the Norwegian Marriage Act left the marriage bar section largely unchanged. As it turned out, the dispensation provision had little practical significance: During the 22 years that the 1969 marriage act was in force, only one mentally retarded person and a few insane persons applied for permission to marry. In most cases, permission was granted.

The Second Norwegian Marriage Law

The Marriage Act underwent a new round of revisions in the 1970s and 1980s, once again in the context of Scandinavian cooperation. Again, marriage prohibitions on medical grounds were among the central issues. But whereas the question for the previous revision had been whether the marriage bars should be expanded, the issue now was whether they should be discarded. The Ministry of Justice this time turned to the psychiatrists Per Anchersen (1910-1988) and Ole Petter Lossius (1925-) for advice. Anchersen was at the time head of the psychiatric ward for men at Ullevål Hospital and served as a standing advisor on forensic psychiatry in court. On this occasion, he was to give a statement on insanity as a barrier for marriage, whereas Lossius' statement would concern mental retardation. Lossius was then a district psychiatrist, and an active government advisor on the care of the mentally retarded. Both Anchersen and Lossius in their statements to the Ministry strongly downplayed heredity's role in the causation of mental conditions. Anchersen claimed, in a statement dated May 23rd 1973,

> Numerous intensive twin studies and comprehensive family studies have long established the role of hereditary factors in the aetiology of the functional insanities [...] Especially following Luxenburger's (1936) investigations in

> Germany and Kallman's (1938) inquiries in USA there was a strong tendency to emphasise the importance of hereditary factors. Recent Scandinavian twin studies (Tienari, 1963 from Finland, Kringlen, 1967 from Norway, Essen-Møller, 1970 from Sweden, and Fischer, 1973 from Denmark) have shown that other factors must play a considerably more important role for the development or manifestation of insanity than previously assumed. Among identical twins (who are identically hereditary equipped) one found that when one twin suffered from schizophrenia, the other was schizophrenic in only 30-40 per cent of the cases (Marriage Act Committee, 1986: 119).

Therefore, Anchersen concluded,

> One can not see that there is any sound reason for setting insanity apart by making it more or less preventive for marriage on eugenic grounds (Marriage Act Committee, 1986: 119).

For several reasons Lossius' complementary statement on mental retardation was given six years later than Anchersen's statement. Lossius, who knew Anchersen's statement, went even further in his rejection of past beliefs:

> In a certain period, one tried to rationalise old race hygienic ideas by way of a so-called eugenic point of view. By denying the mentally retarded the right to marriage, one hoped to prevent mental retardation among the offspring. This reasoning is not in accordance with modern genetic facts. The latter show that the moderately and more seriously mentally disabled theoretically will not produce more mentally diseased offspring than the average population (Marriage Act Committee, 1986: 122).

Thus, with regard to the heredity of mental disorders, the pendulum had swung to the other extreme since Ødegård's statement of 1959. What caused this dramatic shift? One reason was no doubt the twin studies to which Anchersen referred.

Twin studies utilise the fact that monozygotic twins in theory are hereditarily identical, whilst dizygotic twins are no more hereditarily alike than other siblings. If a specific character very often is shared between both twins in identical pairs, but seldom between ordinary twins, that character is presumably heritable to a large degree (although there may also be environmental explanations for this). In the language of twin researchers, the degree to which a certain character is shared, usually expressed in percentage, is called the "concordance figure". The interesting relation with regard to the heredity issue is the difference between the concordance figures of monozygotic and dizygotic twins with respect to the same character. A big difference (in "favour" of the former) is often taken to indicate a high degree of heritability.

The "twin method" has been much used in the study of mental diseases in general, and of schizophrenia in particular, at least since the 1930s. Until the mid-1960s, the classical work was Kallmann's twin studies from the 1930s and onwards. Kallmann's first important work on the genetics of schizophrenia (Kallmann, 1938) was a family study based on German data. After moving to USA in 1936, Kallmann pursued his topic through twin studies. He was not the first, however, to conduct a twin study of schizophrenia. In Germany Hans Luxenburger had done several such studies in the 1920s and 1930s (see in particular Luxenburger, 1936); Aaron J. Rosanoff and associates had conducted

one in USA in the mid-1930s (Rosanoff *et al.*, 1934); and Erik Essen-Møller had done one study in Sweden, published in the early 1940s (Essen-Møller, 1941). What made Kallmann's work special was the huge size of his sample. Prior to 1946, the largest twin study of schizophrenics was the Rosanoff study of 41 monozygotic and 101 dizygotic pairs. Kallmann's first study covered 174 monozygotic and 517 dizygotic pairs (Kallmann, 1946). In an extended version from 1953 the corresponding numbers were 268 and 685, respectively (Kallmann, 1953). Kallmann calculated the concordance number for monozygotic twins with regard to schizophrenia (both in 1946 and 1953) to be 86%, while dizygotic twins were concordant in only 15% of the cases. In 1946 Kallmann concluded,

> The difference in morbidity between dizygotic and monozygotic co-twins approximates the ratio of 1:6. An analysis of common environmental factors before and after birth excludes the possibility of explaining this difference on non-genetic grounds (...) The predisposition to schizophrenia, that is, the ability to respond to certain stimuli with a schizophrenic type of reaction, depends on the presence of a specific genetic factor which is probably recessive and autosomal (Kallmann, 1946: 198).

Due probably to the impressive size of his sample, Kallmann's figures and conclusions were widely accepted among psychiatrists. Kallmann himself used his figures with great confidence in his chapter on "The genetics of mental illness" in the state-of-the-art American Handbook of Psychiatry in 1959 (Kallmann, 1959:191). Beginning in the early 1960s, however, Kallmann's work was subjected to mounting criticism. Alternative interpretations of his results were proposed (especially from the psychoanalytically oriented camp; see for instance Jackson, 1960); his methodology was questioned (Rosenthal, 1959); until, finally, new results replaced Kallmann's figures. In 1963 the Finnish psychiatrist Pekka Tienari published a study in which all 16 monozygotic pairs were discordant with respect to schizophrenia – which means zero concordance (Tienari, 1963). Shortly thereafter a Norwegian study showed no difference in concordance numbers for monozygotic and dizygotic twins (Kringlen, 1964). These results, indicating that schizophrenia was not heritable at all, came as a big surprise to an international psychiatric community for which Kallmann's research had become textbook orthodoxy.

However, the follow-up twin studies that were conducted in the following years could not quite sustain such a radical conclusion. In Norway Einar Kringlen (1931-) crosschecked all twin births registered at the Central Bureau of Statistics between 1901 and 1930 with the National Psychosis Register (a register initiated and still administered by Ørnulv Ødegård). It included all admissions to Norwegian psychiatric institutions after 1916. The crosscheck resulted in a quite large sample of twins (eventually 342 pairs), one or both of whom had been hospitalised because of a psychosis. Next, zygosity and diagnoses were established by quite elaborate procedures (including blood tests from and personal interviews with subjects who were not always very cooperative – Kringlen, 1966 gives a vivid picture of the research process). Finally, Kringlen calculated the concordance figures:

> In the main, the concordance figures

> for schizophrenia in dizygotic twins are not significantly different from those of previous studies – namely, 5 to 14 percent. The figures for monozygotics, on the other hand, are considerably lower than usually reported – namely, 28 to 38 percent, depending on whether the concordance rates are based on hospitalised cases or personal investigations, and whether a wide or strict concept of schizophrenia is employed. The difference in concordance rates for monozygotic and dizygotic twins with respect to schizophrenia is statistically significant, thus supporting a genetic factor in the aetiology of schizophrenia, but the genetic factor seems to be much weaker than it is usually considered to be (Kringlen, 1966: 178).

Kringlen discussed a number of possible sources of error in previous studies, including sampling procedures, zygosity diagnoses, and risk period (that is, the corrections made for age in cases where a pair of twins had not passed the risk period). According to Kringlen, in Kallmann's studies these sources of error added up to give a far too hereditarian conclusion. The main factor of error in Kallmann's studies was his sampling procedures. Instead of starting out with an unselected sample of twins in, for instance, birth registers, Kallmann's twin data was based on reports from the staffs of mental hospitals. They would be more likely to recognise a pair of twins when both co-twins were admitted (concordant pairs) than when only one was (discordant pairs). Kringlen thus concluded:

> In the investigations so far, this pattern seems consistent: *The more accurate and careful the samplings, the lower the concordance figures* (Kringlen, 1966: 184, italics in original).

The new results quickly replaced Kallmann's figures. Indeed, within a fifteen years period, Kallmann's name almost disappeared from psychiatric textbooks. For instance, the chapter on "The Genetics of Schizophrenia" in the second edition of the American Handbook of Psychiatry – a chapter of which Kallmann had been the obvious author fifteen years earlier – was now written by one of his key critics (Rosenthal, 1974).

Once again, the complicated process of joint Scandinavian law preparation was slow. The committee responsible for preparing the new Norwegian law did not finish its work until the mid-eighties. At this point, the marriage bar for the insane had outlived its credibility. Sweden had discarded the marriage bar in 1973, and proposals to do the same were already several years old in Finland and Denmark. Also the Norwegian committee noted that there had been "considerable change" in the experts' opinions on marriage bars for the insane since the previous revision of the law (Marriage Act Committee, 1986: 31). Following the proposals of both Anchersen and Lossius, the committee concluded that the bar should be lifted. Apart from these expert recommendations, the committee also argued that the bar was - and always had been - hard to exercise, and that marriage bars in any event could not prevent people from living together. As far as eugenics goes, the committee, following Lossius, argued rather pragmatically that the complexity that attached to the heredity of the conditions in question did not support the use of eugenic reasoning. The committee did not, in other words, make any principled arguments against eugenics. Another five years went by before parliament finally passed the new Norwegian marriage law in 1991, this time without mentioning

eugenics at all. But the marriage bar for the mentally ill was discarded once and for all.

Science and Politics in the History of Eugenics

In discussions of historical change within the historiography of eugenics, scientific and political factors are often contrasted (see for instance Paul, 1998; Roll-Hansen, 1999). Although historical developments do not come in discrete packages of scientific or political contents, I find the science/politics distinction analytically valuable, not least in the context of expert advice. The decision-making procedures of western democracies implicitly (and frequently explicitly) rest on a division of labour between experts and politicians, where experts provide the factual basis on which politicians make the decisions. Although the experts in fact seldom limit themselves to purely factual matters, the extent to which they do not frequently constitute grounds for criticism. In this perspective, an important issue in the history of eugenics becomes the use of knowledge claims in the arguments advanced by the expert committees. To what extent were these arguments supported by the contemporary state of the psychiatric art, and to what extent must political factors be invoked to explain experts' views? By way of a conclusion to this paper, I would like to address these questions – as they relate to the history of the Norwegian marriage legislation.

According to the Medical Society of Oslo in 1911, the scientific evidence did not at that time support eugenic marriage legislation. Considered with modern eyes, this conclusion seems laudably reasonable. The knowledge of the heritability of insanity was poor in 1911. The recommendation made by the society therefore seems solidly grounded in the science of the day. However, scientific ignorance in matters of political importance may cut both ways. In modern day environmental policy, ignorance and uncertainty is often used as an argument *for* precautionary action. This rhetorical use of uncertainty has several parallels in the history of eugenics. For instance, in 1963, Nils von Hofsten recommended sterilization of the feebleminded – despite uncertainty about the hereditary mechanisms. According to Roll-Hansen (1999, p. 206) this position is "most correctly posed in terms of what we today might call a precautionary perspective". In Norway, Jon Alfred Mjøen had used the structurally similar precautionary argument to argue for eugenic reforms in the early 20th century (Roll-Hansen, 1995, p. 163). In contrast, the Medical Society in 1911 used scientific ignorance to argue *against* eugenic measures. This contrast has to be explained by non-scientific factors. In 1911, eugenics had only recently been introduced in Norway. Eugenic measures were perceived by the Medical Society as something new and radical. Several members expressed high hopes for such measures in the future, but considered them preposterous for the time being. And although traditional scepticism towards state interference in family life (expressed by the more conservative members of the Society) was giving way to more modern views of an active, scientifically justified social policy (as represented for instance by Scharffenberg), the traditional values still had a strong hold on the majority. In this situation, the burden of proof was

on the eugenicists.

By the late 1950s, however, the situation was different. In the decades that had passed between the discussion in the Medical Society in 1911 and Ødegård's pro-eugenic recommendations of 1959, mounting evidence, particularly through the work of Kallmann, had suggested that schizophrenia was heritable to a considerable degree. The ignorance perceived by the Medical Society was no longer there. In the same period, and particularly before World War II, eugenic legislation had been passed in many countries, and eugenics was no longer seen as particularly radical. Still, one can sense a defensive stance in Ødegård's argument – it is as though he argues before a sceptical audience. This may in part have been due to a new emphasis on individual rights that was gradually gaining territory after the fall of the excessively centralised regimes of fascism and Nazism. It may also in part reflect the ambiguity of Ødegård's own attitude towards eugenics. Early in his career, he had strongly emphasised the complex character of the aetiology of the insanities; and he did definitely not share Kallmann's view of schizophrenia as a simple Mendelian recessive. When he nevertheless made the case for a eugenic marriage law in 1959, he must have placed considerable weight on von Hofsten's calculations. The point of these calculations was exactly that eugenics could work, even if the heredity was complicated. They were designed to show that what von Hofsten termed "the eugenic effect" of a given program (in his case sterilization) depended on several initial conditions, the more important ones being the effectiveness of the program and the mode of inheritance. The simple fact that a certain disease exhibited a complicated inheritance pattern did not necessarily rule out a eugenic effect. Ødegård's embrace of eugenic marriage measures at a time when Kallmann's high heredity figures still ruled was therefore not necessarily scientifically flawed – although, admittedly, it has to be considered rather optimistic, given the low effectiveness such a program could be expected to have.

Diane Paul's essay "Did eugenics rest on an elementary mistake?" (1998) argued that one often-claimed causal explanation for the decline of eugenics, namely the discovery of the complexity of human heredity, suffers from a serious time lag between cause and effect. According to Paul, genetic and medical experts realised already in the 1910s that most eugenically interesting conditions were Mendelian recessives, if not more complicated still. They also realised what this, together with the Hardy-Weinberg principle, meant for the effectiveness of eugenic measures: any such measure would work very slowly. The eugenicists' reaction was not to give up eugenics, Paul claimed, but to broaden their programs. Ødegård may be a case in point: perhaps he hoped that by adding eugenic marriage measures to the already-in-place eugenic sterilization law and a future eugenic abortion law, the eugenic effect would become visible. Whether this is a correct analysis of Ødegård's motives or not, the point of Paul's argument is that scientific developments are not enough to explain the eventual decline of eugenics – the scientific facts that could have had such an effect was already in place by 1920. Therefore, the decline of eugenics must be explained by political rather than scientific developments.

However, the same kind of argument may also be reversed to question the perhaps most prevalent political explanation of the decline of eugenics, namely the adverse reaction to the policies of the Third Reich. What Kevles (1986) called "reform eugenics" (as opposed to the popular, but scientifically more naive "mainline eugenics" movement) was still strong in the 1950s, more than ten years after World War II. In Norway Ødegård embraced eugenic marriage policies as late as 1959; in Sweden, von Hofsten argued for eugenic sterilization in 1963. Any adverse effect of World War II on the popularity of eugenics, therefore, can not have been immediate. Although it is hard not to see the Western post war emphasis on individual rights as some kind of reaction against the totalitarian regimes of the 1930s, that is hardly the whole explanation for the decline of eugenics in the 1960s. On the contrary, the evidence from the history of the Norwegian marriage legislation suggests that this decline had much to do with scientific developments. What seemingly was the case was that the new twin studies of the 1960's, questioning Kallmann's strong hereditarian conclusions, were instrumental in discrediting the eugenic arguments. The new twin studies were apparently what made Ødegård issue a supplementary statement in which he expressed doubts about the eugenic effect on which he had relied nine years earlier. This is not to say that the new heredity figures for schizophrenia did not come conveniently for a new generation of psychiatrists very much aware of the new focus on individual rights. But to implement these rights properly, they needed new scientific results.

As far as the development of the Norwegian marriage law goes, there are actually very few traces of any principally political renunciation of eugenics. Although the committee that prepared the new law of 1991 altogether abandoned eugenic marriage measures, they cited the new twin study results, not individual rights, as their motive for doing so. In other words, the denunciation of eugenics in this case was explicitly scientific rather than political. Nor do I know of any other official body involved with the preparation of the new law that explicitly and on principal grounds distanced themselves from eugenic ideals. To the extent that eugenics was mentioned at all, it was discarded on the basis of new results from heredity research. More often, the issue was simply not brought up at all.

According to a popular picture of the rise and fall of eugenic policies, scientific experts were instrumental in introducing eugenic legal measures in the first part of the twentieth century and did little or nothing to renounce them in the end. There is little more to such generalisations than the sum of the many cases that constitutes its parts. Although the received view may be valid in many instances, there are bound to be many cases that tell a different story. They should serve to adjust the big picture. If the above observations are correct, the development of the Norwegian marriage laws constitutes one such differing account.

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