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WHEN HARVARD SAID NO TO EUGENICS

the J. Ewing Mears Bequest, 1927

PAUL A. LOMBARDO

ABSTRACT James Ewing Mears (1838–1919) was a founding member of the Philadelphia Academy of Surgery. His 1910 book, *The Problem of Race Betterment*, laid the groundwork for later authors to explore the uses of surgical sterilization as a eugenic measure. Mears left \$60,000 in his will to Harvard University to support the teaching of eugenics. Although numerous eugenic activists were on the Harvard faculty, and two of its Presidents were also associated with the eugenics movement, Harvard refused the Mears gift. The bequest was eventually awarded to Jefferson Medical College in Philadelphia. This article explains why Harvard turned its back on a donation that would have supported instruction in a popular subject. Harvard's decision illustrates the range of opinion that existed on the efficacy of eugenic sterilization at the time. The Mears case also highlights a powerful irony: the same week Harvard turned down the Mears legacy, the U.S. Supreme Court endorsed eugenic sterilization in the landmark case of *Buck v. Bell*. Justice Oliver Wendell Holmes, Jr., graduate of Harvard and former member of its law faculty wrote the opinion in that case, including the famous conclusion: "Three generations of imbeciles are enough."

Who supported eugenics? Some commentary asserts that eugenics was a movement of one side of the political spectrum, peopled by elites or political primitives, easily defined as bigoted and bloodthirsty. The word itself is most often simplistically and sometimes exclusively associated with Hitler and the Holocaust.

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It is also sometimes identified solely with racial bigotry. But the historical record is less tidy. The evidence shows that the “science of good birth,” as it was often known, had numerous facets and attracted supporters with a multiplicity of motives. Though we routinely identify eugenics as an ideology that spawned immigration quotas reflecting ethnic prejudice, marriage restrictions based on race, and coercive state sterilization laws, it is impossible to know—absent further examination—how much individuals who voiced support for eugenics during the first third of the 20th century in America favored any of those legal measures.

Between 1907 and 1927, 26 states passed eugenical sterilization laws. During that same period, nearly 400 colleges and universities offered courses in eugenics, while the majority of high schools in the country used textbooks that embraced a positive outlook toward eugenics (Selden 1999). It would be reasonable to take the popularity of eugenics as a valid explanation for the 1927 U.S. Supreme Court decision in *Buck v. Bell*, which endorsed the constitutionality of eugenical sterilization. The year 1927 has been identified as the high water mark for popularity of eugenic policies (Lombardo 2008). Yet the same week that *Buck* was decided, national newspapers and magazines carried stories that would challenge such a conclusion. Those reports announced that the country’s oldest and most revered educational institution—Harvard University—refused to accept a gift from Dr. J. Ewing Mears to support instruction in eugenics, particularly the “treatment of defective and criminal classes by surgical procedure” (contrast *NYTimes* 1927a with *New York Times* 1927b).

Mears was a prominent Philadelphia physician, who was widely known as a supporter of eugenics. Upon his death, a colleague reported that Mears had written “extensively and forcibly on this complicated problem” and commended the doctor’s publications to legislators, whose attention to the topic would reduce “our annual crop of mental defectives” and would lead to the removal of “an enormous portion of the burden of taxation” (Harte 1921).

Harvard’s decision to reject the Mears gift led to public debate and, eventually, to extensive litigation. News of the Mears will contest was announced in medical and scientific publications, as well as in newspapers all over the country. This article presents the context in which Harvard’s decision was made and explains the reasons for it. Reexamining this historic episode reminds us that those who were identified as supporters of eugenics cannot be easily classified, nor easily understood, and that the word *eugenics* had a variety of meanings to Americans in the early 20th century.¹

J. EWING MEARS: BACKGROUND

James Ewing Mears was born in Indianapolis in 1838. He attended Trinity College in Hartford, Connecticut, graduating in 1858. Like his father a generation earlier,

¹The Mears case is rarely mentioned in the extensive literature on eugenics published in the last 30 years. The most lengthy discussion is two paragraphs in Reilly 1991, and one paragraph in Lombardo 2008.

Mears enrolled in Jefferson Medical College in Philadelphia. He left school to serve as a military cadet and later as an executive officer in Civil War hospitals, then returned to Jefferson to graduate in 1865. He became known for his pioneering surgical techniques, particularly innovative surgery on the jaw; his early adoption of antiseptic procedures; and his extensive medical publications spanning the late 19th and early 20th centuries. Mears was a charter member of the American Surgical Association, and later its President. He was also a founding member, then President, of the Philadelphia Academy of Surgery (Wagner and Savacool 1992).

Mears's Eugenic Proposal

Mears was one of the first surgeons to do intricate surgery that tied off the vas deferens as a therapeutic strategy to shrink an enlarged prostate. His first article on that topic suggested it might be of use in treating men who “overindulged the sexual appetite” (Mears 1894, 831). Mears later expanded on the point, advancing the opinion that many people in public institutions, such as “the feebleminded, the idiot, [and] the pervert,” might owe their “mental and moral condition” to “perversion of the sexual functions” (484). Surgery for them, which he had perfected by operations on dogs, could have “curative effects” and might require neither the consent of guardians nor enabling legislation, both of which could be difficult to obtain for a more radical operation like castration. The operation Mears proposed would be less mutilating, though conferring the same measure of sterility to men than removal of ovaries in women, which had “not only been advocated, but practiced in females suffering from certain forms of insanity” as therapy for those conditions (Mears 1896, 485). Dr. Albert Ochsner, a contemporary of Mears, published an 1899 article prescribing vasectomy as a treatment for prostate problems. He also suggested that surgery would eliminate hereditary criminals as well as “chronic inebriates, imbeciles, perverts and paupers.” This article is widely cited as evidence that Ochsner first advocated eugenic sterilization via vasectomy (Ochsner 1899).

Mears's early proposals for surgery as “therapy” for various supposedly hereditary ailments appeared at least five years before Ochsner, but the implications of his proposal were only made clear 15 years later. Mears wrote an article in 1909 that was considerably more direct than his earlier proposals for sexual surgery. The landscape of public opinion had shifted by then, and Indiana, Washington, California, and Connecticut had passed eugenic sterilization laws. Support was growing for a medical remedy to the problem of overcrowded institutions and the social costs they generated. Mears considered sterilizing surgery an effective means of treating “certain classes who are a charge to the state . . . and a constant and perilous menace to the well-being and welfare of the human race.” This group included “perverts and degenerates, idiots, imbeciles, epileptics and the vicious insane.” The targeted group also included “criminals of a certain type who, as a rule, are the subjects of sexual perversions and abnormal indulgences.” “These defectives,” argued Mears, are “as dangerous to the integrity of the community and state as the foe armed

with weapons of warfare.” Degeneracy was increasing in society, he said, such that the “vaporings of the idiot . . . the incoherent ravings of the viciously insane, [and] the cackle of the imbecile” were increasing in volume (585). There was a need to adopt “drastic measures” to check this proliferation of degeneracy: “The members of our noble profession are not only the conservators of the public health, but are, or should be, in every sense the promoters of the public good” (586).

Mears’s work on the surgical application of eugenics culminated in a 1910 book, *The Problem of Race Betterment*. In it he argued against the use of vasectomy, which made procreation impossible for the recipient, but did not lessen the person’s likelihood of engaging in sexual relations. In fact, vasectomy was thought more acceptable to legislatures precisely because it did not interfere with the patient’s sexual activities. But Mears believed that any medical intervention to prevent procreation among “defective subjects” must accomplish two goals. First, it should “inhibit procreation.” But just as importantly, it should also “abolish sexual desire,” since that was “an important contributing cause to the condition of mental, moral, and physical degeneration which is present.” Such a “diseased condition” said Mears, “cannot be dealt with by half measures” (6–7). Mears praised the judges and lawyers who supported sterilization for eugenic purposes, which one claimed would “eliminate nine-tenths of the crime, insanity and sickness of the present generation” (37). He also favored the discretion given to medical experts in laws such as the one adopted in California, and favored the stress it put on “the sexual perversion of the convict” (39). Mears wrote yet another article on the topic in 1912. He supported a law that would prohibit elective operations to sterilize people not in institutions, fearing that such an option would allow women to “escape the duty of motherhood” (458).

Reaction to Mears’s work in eugenics was mixed. One commentator in the *American Journal of Medical Science* conceded that Mears’s solution to the problem of increasing numbers of people “born into the lawless sphere” was easy to agree with, though the problem would be better confronted with a federal government approach rather than state by state (T.H.W. 1912). Another reviewer, in the *British Medical Journal*, thought Mears’s candor “would no doubt come as a shock” to some readers, though he applauded Mears’s efforts to put “the subject plainly, perhaps even a little too plainly” before the public (*BMJ* 1911, 1202). Some endorsed the Mears plan, while others felt that the book was merely “a polemic expressing the writer’s opinions” on a topic that was unsettled even among medical experts (*Boston Medical Surgical Journal* 1911, 578).²

Though he was occasionally controversial, Mears had extraordinary professional success. By the time of his death, he had amassed a significant estate and won public renown as a leading voice in the young American eugenics movement.

²The debate over sterilization of criminals would continue for decades and not be settled legally until a 1942 decision of the U.S. Supreme Court; see, generally, Nourse 2008.

The Mears Will

When Mears died in 1918, he left several thousand dollars to friends and employees and more than \$60,000 to various philanthropic causes and institutions. Mears placed the rest of his estate in a trust to support his sister, Sarah Hall, during her lifetime. His will provided that any money remaining after her death would revert to Harvard University. The relevant provisions of the Mears will are set out below:

All the rest, residue and remainder of the estate, real and personal, I give, devise and bequeath unto the President and Fellows of Harvard College, to be received by them and to be used by them in founding in Harvard University in such a manner as may, in their judgment, be best, "Courses of Instruction in Eugenics." It is my wish that the subject shall be taught in all of its branches, notably that branch relating to the treatment of the defective and criminal classes by surgical procedures, as I have advocated in my writings on the subject, especially as set forth in my book on *The Problem of Race Betterment*. I believe the subject to be one which concerns most importantly the welfare of the human race and I commend the desire I have expressed above to the earnest attention of the President and Fellows of Harvard College, trusting that in the exercise of their authority as my residuary legatee, my wishes in the matter may be executed. (Letters Testamentary, 1919; Laughlin Papers)

Mears's gift, widely reported as a \$100,000 bequest to Harvard, drew the attention of the public as well as the world of science (see, for example, *Boston Globe* 1919; *Science* 1919; *Washington Post* 1919).

EUGENICS AT HARVARD

By the time of Mears's death, eugenics had been part of the Harvard landscape for almost a generation. Students, administrators, faculty, and staff members were thoroughly versed in the work of eugenic organizations and the ideas that drove the movement. Scholars of eugenics wrote books about the power of heredity, and the Harvard curriculum included various courses on eugenics. Endorsement of the importance of the eugenic outlook started at the top of Harvard's hierarchy.

Harvard University President Charles W. Eliot was an early supporter of eugenic research, and he signaled his approval by serving as Vice-President of the First International Congress of Eugenics in London (1912), the first such gathering of scientists, educators, and opinion leaders to explore the growing field. Eliot later sat on the central committee of the First National Conference on Race Betterment (1914), organized by the eugenically oriented Race Betterment Foundation. Eliot was a public advocate of eugenics, predicting that "biological science" would open the door "to the prevention as well as cure of . . . [the] . . . bodily defects" that caused such antisocial behaviors as murder, robbery, forgery, and prostitution. "These are

all biological problems,” he said, “and the progress of biological inquiry during the past fifty years is sufficient to afford the means of solving on a large scale these fundamental social problems” (Eliot 1915, 919, 926).

Eliot’s secretary was Frank W. Taussig. After his undergraduate study at Harvard, Taussig went on to earn a PhD in economics and a law degree there, and eventually he was given an honorary doctorate as well. Taussig began teaching at Harvard in 1882 and remained on the faculty until 1925. His 1911 *Principles of Economics* became one of the most widely used textbooks in the field (Shumpeter, Cole and Mason 1941), and it included one of the harshest statements supporting a eugenical approach to labor problems that was ever written.

During a discussion of unemployment and the utility of a minimum wage, Taussig (1911) divided those “incapable of work” into two groups. The first group consisted of those who suffered from old age, illness or accidental disability—causes over which they had no control. Insurance or charity might address their plight, said Taussig. But the second group, such as the “feeble minded, . . . those saturated with alcohol or tainted with hereditary disease, . . . irretrievable criminals and tramps” presented more intractable challenges and “should simply be stamped out.” They should not “be allowed at large, still less should [they] be allowed to breed.” Taussig continued:

We have not reached the stage where we can proceed to chloroform them once for all; but at least they can be segregated, shut up in refuges and asylums, and prevented from propagating their kind. The opinion of civilized mankind is rapidly moving to the conclusion that so far at least we may apply the principle of eugenics, and thus dispose of what is the simplest phase of the problem of the unemployable. (300)

Lawrence Lowell followed Eliot as Harvard’s President and was an even more involved member of the American eugenics movement. Lowell served as Vice President of the Immigration Restriction League, which had been founded by Charles Warren, Robert DeCourcy Ward, and Prescott Farnsworth Hall, all 1889 Harvard graduates (Solomon 1956). The League lobbied aggressively for the 1924 Johnson Immigration Restriction Act, which severely limited immigration by Italians and Jews and established quotas on eugenic grounds that remained part of U.S. law for 40 years. Lowell supported research into family bloodlines, and he cooperated with the Eugenics Record Office by making Harvard student records available for research on “the eugenical aspect of records of father and son” that might provide insights to “problems in heredity” (Howard Banker to Harvard President’s Secretary, Aug. 11, 1914; HUA 1914).

Harvard administrators like Eliot and Lowell were joined by several noteworthy leaders in the eugenics movement who were trained at Harvard or were members of the University faculty. Most prominent among them was Charles Benedict Davenport, who would become “the leading exponent of eugenics in America” (Riddle 1947,

83). Davenport received his BA, MA, and PhD from Harvard and taught there from 1892 to 1899. In his final year on the Harvard faculty, he published his first book, which described how Francis Galton, who had coined the term *eugenics*, applied statistics to ideas about heredity (Davenport 1899). The book introduced American scientists to new statistical methods developed by Karl Pearson, Galton's protégé in eugenic studies. In 1910, Davenport founded the Eugenics Record Office in Cold Spring Harbor, New York. It would soon be recognized as the epicenter of eugenic study and propaganda in the United States.

After leaving Harvard, Davenport published *Heredity in Relation to Eugenics* (1911), a popular text that went through many editions. For his entire professional career, Davenport promoted eugenic research among the students he taught and the faculty members he had worked with at Harvard. Davenport's progeny included two men who developed reputations as noteworthy scientists and leaders in eugenic thought: William Ernest Castle and Robert Mearns Yerkes.

W. E. Castle completed his PhD in 1895, taught two years elsewhere, then returned to Harvard as an instructor in 1897. He was a Research Associate of Davenport's Long Island Station for Experimental Evolution in 1904–5. With Davenport's encouragement, Castle became a member of the Eugenics Committee of the American Breeders Association, established in 1906 “to investigate and report on heredity in the human race” and “to emphasize the value of superior blood and the menace to society of inferior blood” (Allen 1986, 232). In 1912, Castle was a member of the American Consultative Committee at the First International Eugenics Congress in London.

Beginning in 1910 and for the next 20 years, Castle taught a course in genetics at Harvard. He published his collected lecture notes for that course in *Genetics and Eugenics* (1916). Castle subtitled his work as a “Textbook for Students of Biology and a Reference Book for Animal and Plant Breeders,” and he dedicated it to his mentor Davenport (Dunn 1965). The book went through four editions and was used in the majority of college biology and genetics classes during that period (Kevles 1985).

Castle authored the 1926 entry on eugenics in the *Encyclopedia Britannica* and also spoke in favor of eugenic sterilization. But in contrast to Davenport, Castle was often a public critic of the direction the eugenics movement was taking, and he generally opposed coercive laws and movement proponents who were willing to restructure society based on largely unproven theories (Castle 1916). For example, in a 1930 article in *Science*, Castle criticized the “broad sweeping statements” that Davenport employed to summarize the dangers of racial disharmony in children of mixed marriages. His criticism of Davenport's eugenic pronouncements eventually led to their estrangement. Castle retired from the Harvard faculty in 1936.

Robert Yerkes also studied under Davenport at Harvard, and he completed a PhD in psychology there in 1902. While he was still a student, Yerkes reported that he was developing a “course in mental heredity and eugenics which shall be of

value to Harvard men and to the race” (“Robert Means Yerkes” 1913, 347). Yerkes became famous for his work in mental measurement and for constructing tests to sort people by eugenic criteria. Speaking to a conference held at the Eugenics Record Office on Long Island in 1914, Yerkes explained his goal: trying “to bring some of the experiences of the student of the behavior of animals to bear upon the problems which the eugenic investigator meets” (Yerkes 1914, 625). Yerkes managed the Alpha and Beta testing programs during World War I, and focused on using intelligence tests to identify “mentally unfit” Army recruits (Hilgard 1965). When the testing was completed, Yerkes’s staff calculated the average mental age of white American soldiers was just above the level for “morons.” The resulting fear of declining intelligence in the country was used to argue in favor of institutional segregation and sterilization to reduce reproduction among the “unfit.” Yerkes’s work in mental testing was also used to justify the eugenic goals of the Immigration Restriction Act of 1924. He spent 15 years on the Harvard faculty, leaving for an academic appointment in Minnesota in 1917.

In addition to Davenport’s most noteworthy students, other Harvard faculty members maintained public identification with the eugenics movement. Edward Murray East completed a PhD at the University of Illinois in 1907 and was named to a faculty position at Harvard’s Bussey Institute in 1909 (Jones 1927). East wrote prolifically, often incorporating his understanding of Thomas Malthus’s *Essay on the Principle of Population* (1798) into his work (East 1924). He applauded the eugenic family studies of the *Jukes* and the *Kallikaks* as examples of “heredity which the world does not desire” (East and Jones 1919, 239).

Mankind at the Crossroads (1924) was one of East’s most influential books. In it he declared: “Charity of the present type, where more of the public money is spent on the imbecile than on the genius, is of rather doubtful value. The final result would appear to be a proportion of imbeciles sufficiently high to guarantee decadence and dissolution” (41). East’s position on race was similarly harsh. He pointed to “innate biological differences” between the white and black races, saying that “the negro race as a whole is possessed of undesirable transmissible qualities both physical and mental, which seem to justify not only a line, but a wide gulf to be fixed permanently between it and the white race” (133). East, who has been called “the most influential figure among geneticists in encouraging the rampant, racist views of American eugenics in the 1920s” (Glass 1986, 132), worked at Harvard until his death in 1938.

Psychiatrist Elmer E. Southard received his BA, MA, and MD degrees from Harvard and was on the faculty from 1901 until his death in 1920 (J.R.L. 1920). He was a member of the first Board of Scientific Directors for the Eugenics Record Office, Vice President of the First International Congress of Eugenics, and Chair of the Eugenics Section of the American Breeders Association, a society of experts in plant and animal husbandry, and the first organization in the United States to embrace the need to formalize representation of the eugenic point of view

(Davenport 1912). In 1915, he addressed a convention of social workers asking, “What shall we do for the feeble-minded, and what shall we do to protect society from them? Coldly speaking, it becomes a question with us, what to do with these waste materials?” (Southard 1915, 316)

Ophthalmologist Lucien Howe joined other eugenics enthusiasts on the Harvard faculty. Howe’s “practical plan” to decrease the number of blind people via a eugenic scheme was initially published in 1918. In 1928, he proposed legislation in Massachusetts requiring that people wishing to marry put up a money bond to insure that blind and other disabled people would not be allowed to have children who might become a public burden (Smith 1928). Howe was a member of the Eugenics Research Association—the research arm of Charles Davenport’s Eugenics Record Office—and he went on to become its President (Ravin and Stern 2010). He was also a delegate to the Second International Congress of Eugenics in 1921, where he presented a paper on hereditary blindness (“Minutes of the Proceedings” 1921). He also published a “Bibliography of Hereditary Eye Defects” for the Eugenics Record Office in 1923.

At the height of eugenics popularity in the United States, British psychologist William McDougall moved to Harvard from London. He had worked with Francis Galton and Charles Spearman on mental testing and eugenics, and in 1914 wrote “*Psychology in the Service of Eugenics*” for the London-based *Eugenics Review*. In his 1921 book *Is America Safe for Democracy?* McDougall declared: “There is good ground to hope that within a few decades all of the United States of America will effectively deal with this most immediately urgent evil, the high birth rate of the admittedly and grossly unfit. It is needless to argue here the relative advantages of sterilization and institutional segregation. Probably both methods will be used” (195). McDougall worked at Harvard from 1920 to 1927.

Finally, the anthropologist and criminologist Earnest A. Hooton was on the Harvard faculty from 1912 to 1954. Hooton’s eugenic sentiments appear in many articles and popular books such as *Apes, Men and Morons* (1937): “Our real purpose should be to segregate and to eliminate the unfit, worthless, degenerate and antisocial portion of each racial and ethnic strain in our population, so that we may utilize the substantial merits of its sound majority, and the special and diversified gifts of its superior members” (210).

Neither the University presidents, Davenport’s students, nor the other men I have named exhaust the list of people at Harvard who were identified with eugenic thought and activism in the first quarter of the 20th century. These men were prominent in fields that ranged from biology, psychology, anthropology, psychiatry, to genetics, and their presence supports the conclusion that study, teaching, and research in eugenics were valued at Harvard University at the time of Mears’s death.

TEACHING EUGENICS AT HARVARD

Eugenics made up an important part of the Harvard curriculum at the time of the Mears gift. Lowell was well aware of the instruction in eugenics that Professors East, Castle, and others had provided during his time as Harvard President. When Dun and Bradstreet heiress Lucy Wilson wrote to Lowell in 1912 asking if the college offered a course in eugenics, Lowell responded that a course was available that covered “Heredity and Mendelian Laws” and would “at least touch on Eugenics.” The course had been developed, he said, in response to the “very distinct “undergraduate demand for instruction in that subject (Wilson to Lowell, Sept. 3, 1912; Lowell to Wilson, Sept. 7, 1912; Lowell Papers).

Lowell was also familiar with the interests of the Philadelphia physician J. E. Mears. His earlier gift had allowed Harvard Medical School to provide a four-year “Mears scholarship” for general medical studies (Mears to the President and Fellows of Harvard College, Oct. 16, 1909; Lowell Papers). Mears wrote Harvard officials regularly to monitor how his gifts were administered, and he paid close attention to the scholarship winners, occasionally attempting to designate the money for a specific person, such as the son of a friend (J. W. Warrant to Dean Christian, June 25, 1910; Mears to Francis Welles Hunnewell, Nov. 15, 1915; Lowell Papers). When Mears died in 1918, it was unclear how many years would pass before his gift would be available for Harvard’s use (Henry R. Brown to Hunnewell, July 1, 1919; Lowell Papers). But the wait was not long. Upon Sarah Mears Hall’s death in 1924, the University received a check for \$56,000. Lowell immediately conferred with faculty members known for their expertise in eugenics for advice on how the gift might be used, and whether what Mears had proposed was feasible.

The first response came from E. M. East, whose own career in genetic research provided a contrast to Mears’s medical perspective. East criticized Mears as a man “who did more writing on the subject of eugenics than he did studying. He was convinced that defectives and criminals should be sterilized, and advocated it extensively. I do not think he was very sound.” According to East: “Strictly speaking, sterilization laws are judicial questions not necessarily connected with the subject of eugenics, which may be defined simply as ‘the study of the part played by inheritance in human affairs.’” He urged Lowell not to accept the Mears legacy, if it required “special emphasis on surgical sterilization” (East to Lowell, Oct. 13, 1926; Lowell Papers).

Lowell also contacted W. E. Castle, who concurred with East. Castle said he would support funding “for study and for instruction in “Race Betterment” including Eugenics as commonly understood and the underlying science of genetics,” and that “the money could profitably be employed to strengthen and extend the work along these lines which the University is now doing.” But he advised rejection of the gift if the will was construed to require “advocacy of any particular set of conclusions or practical measures” (Castle to Lowell, Oct. 15, 1926; Lowell Papers).

Harvard's lawyers told Lowell that it would be a matter of "questionable taste" to accept the gift but then not advocate Mears's views as stated in his will. Harvard's officers concluded that the school was "unable to apply it in accordance with the desires of the testator," and directed that the money be returned to the Mears estate (Thomas Perkins to Lowell, Oct. 26, 1926; Davis to Fidelity Trust of Philadelphia, Dec. 13, 1926; Lowell Papers. Record of Harvard Corporation Vote, Nov. 29, 1926, HUA).

The timing of Harvard's decision and the public attention that accompanied it underlined a powerful irony. Headlines describing the Mears bequest appeared early in May 1927, the same week that many newspapers covered the U.S. Supreme Court decision in the case of *Buck v. Bell*, which endorsed the constitutionality of eugenic sterilization laws. The opinion in *Buck* was written by Oliver Wendell Holmes, Jr., himself a Harvard graduate and member, for a short time, of its law faculty. Holmes's opinion was replete with phrases echoing stock analogies from eugenic propagandists and the opinion almost certainly borrowed arguments directly from Mears's book (Lombardo 2008). But Holmes's resounding line from the *Buck* case—"Three generations of imbeciles are enough"—stood on its own: no one linked the *Buck* case to sentiments that echoed Mears. The *Journal of the American Medical Association* (1927) reported the Mears will controversy, saying "Harvard did not deem it right to pledge itself to teach somewhat permanently that the treatment of defective and criminal class by surgical procedure was a sound doctrine."

The irony was not lost on Harry Laughlin, Superintendent of Charles Davenport's Eugenics Record Office, author of the Model Sterilization Act upon which the law upheld in *Buck* was partially based, and one of the most vocal proponents of sterilization legislation in the country. Laughlin (1927) underlined the puzzling state of affairs in his own publication, the *Eugenical News*. Whatever you may think about teaching eugenics, he said, "So far as the legal aspect of eugenical sterilization is concerned, it is necessary only to refer to the recent decision of the Supreme Court of the United States which upheld the constitutionality of Virginia law on the subject." Laughlin quoted a popular columnist saying: "Harvard may have forfeited a rare opportunity in refusing this proffered gift" (84).

News of Harvard's decision spread quickly, reported in papers from the *New York Times* to the further-flung *Sandusky Register* and the *Kokomo Daily Tribune*. Harvard supporters and alumni wrote Lowell asking why their alma mater had rejected the Mears gift. One doctor who wished to establish a eugenic foundation himself was assured that the decision was "not because they [Harvard] were not interested in eugenics, but on account of the terms and conditions which Dr. Mears had imposed on the teaching of this subject" (John R. Haynes to Lowell, July 15, 1927; Hunnewell to Haynes, July 28, 1927; Lowell Papers). A second correspondent also planned to leave a eugenic bequest and was told that there was "no general objection" on Harvard's part to instruction in eugenics (M. B. Whiteford to Lowell, July 29, 1927; Hunnewell to Whiteford, Aug. 1, 1927; Lowell Papers).

CLAIMING THE MEARS BEQUEST FOR EUGENICS

When the Harvard decision was made public, Laughlin wrote to the Mears trustees. He spoke for the Eugenics Research Association, “an organization interested primarily in promoting first-hand investigation in eugenics.” The association would be pleased to work with the estate, said Laughlin, should it wish “to subsidize any particular research in eugenics.” Laughlin filed a formal application with the Pennsylvania Attorney General and the Philadelphia probate court managing the Mears estate, claiming it in Charles Davenport’s name for the Eugenics Record Office, and in his own name as Secretary-Treasurer of the Eugenics Research Association (Laughlin to Mears Estate Trustees, June 9, 1927; Laughlin to Judge Thompson, Jan. 24, 1928; Laughlin Papers).

Laughlin then wrote to Chicago judge and eugenics enthusiast Harry Olson, asking for strategic advice on how to compete for the Mears estate. Olson had arranged for publication of Laughlin’s *Eugenical Sterilization in the United States* (1922) several years earlier, and he took responsibility for distributing the book. Laughlin explained that Mears’s book on *The Problem of Race Betterment* was the foundation for his own work, which “began where he [Mears] left off in 1910.” Laughlin hoped that the educational activities of the Eugenics Record Office would satisfy the conditions of the Mears will (Laughlin to Olson, Jan. 28, 1928; Laughlin Papers).

Leon Whitney, Executive Secretary of the American Eugenics Society, joined with Laughlin and eugenic fieldworker Arthur Estabrook, Laughlin’s colleague at the Eugenics Record Office, in an attempt to secure the Mears bequest for their organizations (Whitney to Laughlin, Feb. 3, 1928; Laughlin Papers). Whitney and Estabrook traveled to Harvard to explore why the University rejected the Mears gift. President Lowell gave Whitney permission to use the letters that he had received from Castle and East, and with this evidence, Whitney’s lawyers argued that Harvard’s decision was based on a fairly narrow understanding of eugenics, rejecting specific teaching related to surgical techniques of eugenical sterilization that were best taught by a medical school. But eugenics, they countered, “was much broader than the science of medicine.” Whitney pressed for a letter that could be introduced to support the claims of eugenic organizations, but Lowell again demurred, preferring not to enter the dispute directly. He relied instead on an explanation that emphasized academic freedom. Harvard had refused Mears’s gift, he said, because it was “unwilling to agree to restrict the teaching in any subject to the views set forth in any particular text book” (Whitney to Hunnewell, April 17 and 25, 1928; Hunnewell to Whitney, April 27, 1928; Lowell Papers).

THE MEARS WILL IN COURT

There were several hearings to sort out claims to the Mears estate in the Orphans’ Court of Philadelphia County, which had jurisdiction over wills, trusts, and matters of probate. The lawyers for four organizations—the American Eugenics Society, the

American Birth Control League, Michigan's Battle Creek College, and Jefferson Medical College in Philadelphia—attended each one. Those claimants were joined by several members of the Mears family, who filed petitions as next-of-kin.

Two distinct legal theories were at stake. Family members argued that Mears had intended to make a specific gift to Harvard, on the condition that it carry out his plan to teach eugenics. The University's refusal of Mears's bequest was equivalent to voiding that portion of the will. In such cases, the heirs argued, the gift would go by default to the remaining blood relatives.

The institutions and organizations who claimed the Mears estate advanced a contrary theory. The Mears plan for teaching eugenics was motivated by a general charitable intention, they said, meant not only to benefit Harvard, but to benefit society at large. When Harvard rejected the gift, claiming an inability to pursue Mears's goals, others could step into Harvard's shoes and bring Mears's plan to fruition.

The judge agreed with the second theory. He relied on the legal doctrine of *cy pres*, which allows courts to distribute charitable gifts in a way as near as possible to the wishes of donor, even if in a manner not specifically defined in a will. He ruled that just because the Harvard gift had failed, there was no reason to nullify Mears's general charitable wishes by giving the money to family members who were never mentioned in the original will. He interpreted the will to prefer "an academic institution of standing" that could deliver "courses of instruction in eugenics" (*In re Estate of J. Ewing Mears, Deceased*, Orphans' Court of Philadelphia County, April 29, 1929). Neither the American Eugenics Society nor the American Birth Control League fit that definition. The Battle Creek College, originally established to teach Public Health, was closely aligned and supported by John Harvey Kellogg's Race Betterment Foundation. It could accomplish the goals Mears had identified, but the judge said it was his policy not to send the estate of a Pennsylvanian to be distributed to an institution located elsewhere. The only claimant not eliminated at that point was Mears's alma mater, Jefferson Medical College.

JEFFERSON MEDICAL COLLEGE

In many ways, Jefferson Medical College was the most likely place for Mears to leave his estate in the first place. Both he and his father had graduated from the school, and Mears had lectured there. He was memorialized among eminent surgeons, including his mentor Samuel Gross, who had operated on a famous old surgical table at Jefferson. Mears's name was engraved on a stone tablet at the school the year before he died (DaCosta 1928).

When Harvard first announced it would decline the Mears gift, the Jefferson Medical College Board of Trustees decided that it would be "inexpedient" to apply for the legacy, but after hearing that the medical faculty believed the money could be put to good use offering lectures in eugenics and other topics related to heredity,

the Board reversed its decision (Board of Trustees Minutes, May 31, 1927, and May 20, 1928; Faculty Minutes, May 27, 1927; Jefferson University). It insisted, however, that the curriculum must be controlled by the college and its officers, who would not be bound by “any specific attitude or point of view,” and that the Board retained discretion concerning “the manner . . . and particular aspects of the science and art investigated and taught” (Board of Trustees Minutes, April 9, 1928; Jefferson University). The judge at the Orphans’ Court incorporated Jefferson’s conditions into his decision and did not mention eugenic sterilization.

After the Mears will was settled, Harvard faculty member Edwin B. Wilson wrote to Lowell commenting on the newspaper coverage. Wilson was a critic of eugenics, who wanted a record of why “our greatest American University” did not want the Mears money. “Too many of our institutions fall altogether too easily for any gift on any terms,” he said. Lowell’s office replied that the amount of money was not a very large sum,” but more importantly, Harvard “did not want to accept a gift which prescribed and limited the terms of research” as Mears had done. Wilson applauded his University’s decision: “We cannot accept money for being propagandists for any special activity in eugenics” (Wilson to Lowell, Aug. 22, 1930; Hunnewell to Wilson, Aug. 26, 1930; Wilson to Hunnewell, Sept. 5, 1930; Lowell Papers).

Disappointed by the court’s ruling, the Mears family members appealed the decision to the Supreme Court of Pennsylvania. The appeal failed when that court decided that the gift was best characterized as a general charitable gift, whose purpose could be carried out by many kinds of institutions, but a gift that could best be carried out by another medical school. Jefferson was “amply equipped to investigate, and, if necessary, teach the subject of ‘Eugenics’ to such students as may desire instruction upon that branch, and its standing as a medical institution insures its faithful regard for the purposed of the trust given it.” Since the Philadelphia school was required to put up a \$75,000 bond and report in five years how the money had been spent, the court was satisfied that the bequest “was fully protected” from any arbitrary uses (*In re Mears’s Estate*, 299 Pa. 217, 149 A. 157 [1930]). There was brief attention to the court’s decision in legal journals, but it was clearly a reflection of established common law precedent and occasioned little additional commentary (*Brief* 1930).

After the court battles were over, Jefferson established the J. Ewing Mears Teaching and Research Fellowship, and the medical school named a committee to determine how the Mears bequest would be spent. The committee recommended the appointment of a scholar who would investigate “blood conditions.” The first full-time Mears Fellow was Dr. Leandro Tocantins, who held the fellowship for five years and focused on the “hereditary tendencies of pernicious anemia” (Board of Trustees Minutes, June 2, 1930, and Jan. 21, 1936; Faculty Minutes, Sept. 28, 1931; Jefferson University). Tocantins eventually became a full-time faculty member at Jefferson, and an accomplished hematologist (Pemberton 2011). None of his research focused on eugenics, as it was generally understood.

Harry Laughlin maintained contact with the Dean at Jefferson Medical College to request updates and reports on how the Mears money was being put to use. He was told that the bequest, which by then was \$75,000, would be used to “investigate some of the broad problems of Heredity” but that it would not be “restricted to contraceptive measures” (Laughlin to Rose Patterson, Nov. 17, 1931; Patterson to Laughlin, Nov. 24, 1931; Laughlin Papers). Laughlin’s own true sentiments were probably captured by the anonymous note in his files of the Mears will: “wouldn’t this make a minister strike his father? At any rate the heirs didn’t get it and eugenics did” (Laughlin Papers).

CONCLUSION

The eugenic bequest Mears left was not unique, and many other kinds of eugenic proposals can be found in the public record before and after Mears. In 1913, a group calling itself the California League of Justice had a bill introduced in that state’s legislature that would provide \$100,000 funding for a “state mating farm” dedicated to “practical eugenics.” The farm would house 25 “selected couples” who would live in “idyllic conditions . . . under the eyes of experts” and presumably deliver well-born children (see Cahill 1913). In 1932, a wealthy Canadian left almost \$300,000 to establish a foundation that would pay \$1,000 to parents whose children were judged “99% perfect” by eugenic criteria (*Miami Daily News Record* 1931; *Salt Lake Tribune* 1931). However, an Ontario judge invalidated the bequest, determining that the gift was not “for charitable purposes” (*Ames Daily Tribune* 1932). Long after the Mears dispute, Los Angeles sculptor Felix Peano killed himself in 1948, but left \$10,000 “to any Eugenic society” for the “creation of a superman” via artificial insemination and genetics. His gift was approved by a California court (*Billings Gazette* 1948; *Reno Evening Gazette* 1948). The 1961 will of Harvard University psychologist and statistical expert Truman Lee Kelley set up a “eugenic trust” valued at \$175,000, conditioning payments to his unmarried sons based on tests they and prospective brides would take to determine their “E score,” a eugenic assessment purporting to measure health, intelligence, and character (*Syracuse Post Standard* 1961). The men would earn extra cash for each point they scored above “the American white average” on the tests; additional funding would be provided on a similar basis on the birth of each child (*Racine Journal Times* 1962; *Stars and Stripes* 1961; see Flanagan 1961).

Sacramento banker and realtor Charles M. Goethe founded the Eugenics Society of Northern California in 1933 and was President of the Eugenics Research Association in 1936. He distributed eugenic propaganda in favor of sterilization and restriction of immigration—particularly of Mexicans—that was so rabid it embarrassed leaders of the eugenics movement (Stern 2005). At his death in 1966, he left money in his will to fund college scholarships for students who wished to study “Eugenics, genetics and the biological or life sciences.” Those scholarships continue to be awarded today (Freemasons of California 2014).

The Mears will contest is an example of how complex reactions to ideas that fell within the understanding of the term *eugenics* were in the early 20th century. While some academics called arguments for eugenic sterilization passé, they continued to claim that habits of behavior were controlled by hereditary racial or ethnic differences that reoccurred within families. Meanwhile, others debated what by then had been settled in court: that the feeble-minded, the poor, and criminals could be sterilized to cut off defective bloodlines. While Harvard did not accept the restrictions the Mears will seemed to require, that decision was not a rejection of all features of eugenic teaching, which remained in the curriculum at Harvard and many other universities for years to come (Caldwell 2012; see also Vaillant 2012).

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