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Unlawful Intimacy: The Criminalization of Interracial Relationships in Progressive-Era Chicago

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This article shows how Progressive-Era state actors in Chicago employed open-ended, low-level criminal charges directed at regulating the moral health of the community to criminalize interracial relationships—even though interracial marriage had been legal in Illinois since 1870. Capacious legal definitions of offenses like vagrancy, disorderly conduct, adultery, and fornication allowed police officers and judges to delineate moral and immoral relationships along racial lines. Using newspaper articles, writing from contemporary social reformers, and court reports, this article reconstructs the treatment of interracial couples in the Chicago legal system to show how discretion in criminal law can reinforce racial hierarchy. I offer three historical arguments: first, that individual arrests and prosecutions of interracial couples labeled lawful, interracial relationships as a form of unlawful "vice," second, that large-scale raids on spaces for interracial socialization reinforced the criminality of interracial intimacy in a segregated city, and third, that singling out interracial couples allowed the state to exercise control through intrusive forms of punishment like probation and institutionalization.

INTRODUCTION

In 1918, Judge Wells Cook, presiding over the Chicago Municipal Court's Morals Court branch, sentenced Norval Wilburn to six months in prison for fornication (Speedy 1918). To prove a charge of fornication, Illinois law required a showing of circumstances that raised "the presumption of cohabitation and unlawful intimacy."[1] Mr. Wilburn, a Black man, was arrested in his home where he lived with wife Mable Fauhl, a white woman. The couple explained to the arresting officer that they were legally married, which the officer explained in turn to Judge Cook in the courtroom. After all, interracial marriage had been legal in Illinois since 1870 (Pascoe 2009, 40).

And yet, Judge Cook proceeded to sentence Mr. Wilburn to prison, and, according to an article in the *Chicago Defender*, he also instructed Ms. Fauhl to "keep away" from Mr. Wilburn, calling him a racial slur (Speedy 1918, 10). Armed with the power to hear charges of immorality and to structure punishments from his bench, Judge Cook decided

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1. Illinois Criminal Code Vol. II § 38.12 (1921).

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that the legal marriage between a white woman and a Black man constituted "unlawful intimacy" under state law.

Judge Cook wrote to the *Defender* to provide a rebuttal of its account of the trial. He denied using a racial slur, and he insisted the case was tried "in open court, fairly, squarely, and impartially," and that he "did not consider the color or race of either party involved" (Cook 1918, 10). Judge Cook's letter suggests that in Chicago in 1918, the open consideration of race in the courtroom crossed the line into socially unacceptable territory. Still, he failed to provide an alternative rationale for finding Mr. Wilburn, a lawfully married man, guilty of fornication. Hiding behind the capacious definition of fornication as "unlawful intimacy," it appears that Judge Cook punished the couple simply for being interracial while simultaneously insisting race played no part.

During the Progressive Era, state actors given control over identifying, charging, and punishing people for crimes had at their disposal many similarly open-ended misdemeanors designed to regulate the moral health of the community. Morals law—fornication, adultery, vagrancy, prostitution, and disorderly conduct—criminalized broad, ill-defined "immoral" actions, like wantonness, idleness, any conduct "tending to debauch the public morals," and even unsightly appearance.[2] Individuals given the power to decide which people and actions fell within these categories often drew lines unevenly based on their own biases and motivations, embedding hierarchical ideas about race into Illinois's race-neutral criminal code.

This article focuses on a particular time and place—Chicago in the first three decades of the twentieth century—to provide a snapshot of how morals law operated to "criminalize" a type of intimate relationship that appeared legal under state law: interracial marriage. It builds upon the work of legal scholars and historians examining open-ended misdemeanor charges and how they reinforce hierarchy along racial, gender, and ability lines.[3] And, it builds on the work of Peggy Pascoe, whose book *What Comes Naturally* provides an in-depth analysis of how "antimiscegenation" statutes operated to construct the very meaning of race in the United States. Pascoe's work did not directly explore how the law treated interracial couples in states *without* operative statutes criminalizing interracial marriage. In states with such statutes, the boundaries between lawful and unlawful marriage appear visible in the pages of state criminal codes. But I find that even in a state without operative statutes criminalizing interracial marriage, morals law still allowed state actors to distinguish between lawful and unlawful intimacy along racial lines.

This article reconstructs the treatment of interracial couples in Progressive-Era Chicago using court reports, newspaper articles, and writing from social reformers of the era.[4] Through arrests, adjudications, and punishments, I argue that state actors

2. Revised Statutes of Illinois § 38.270 (1897); Illinois Criminal Code Vol. I § 38.55 (1921); Chicago City Code 1–2 (1881). For an overview of state laws criminalizing "ugliness" during the Progressive Era, see Schweik (2009).

3. Morgan (2021); Natapoff (2018, 149–170); Shah (2005). For scholarship that uses marriage as a lens through which to examine the intersection of state power, race, class, and ability more broadly, (see Cott 1998; Canaday 2008; Volpp 2005).

4. The goal of this article is to provide an example of how a specific institution—the Municipal Court of Chicago—and the specific ideas embraced by its leaders operated to reinforce hierarchies not reflected in the statutory law that it applied. This article does not provide a comprehensive analysis of every morals case that the city's court system handled. Nor does it provide a complete picture of all the arrests, prosecutions, or

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embedded discriminatory ideas about interracial intimacy within race-neutral criminal language. Part I of this article shows how individual arrests and prosecutions of interracial couples marked interracial intimacy as a form of unlawful "vice." Part II examines dragnet vice raids against interracial spaces, which labeled them as inherently immoral. Finally, Part III looks at punishment, showing how the city's court system singled out individuals in interracial relationships for aggressive state control and intrusion.

I INTERRACIAL RELATIONSHIPS AS CRIMINAL VICE

During the Progressive Era, Illinois's state laws contained no provisions about interracial marriage. But this had not always been in the case. In 1829, Illinois passed a statute prohibiting the marriage between white and "colored" persons, making them "null and void in law" and allowing violators to be whipped or imprisoned.[5] Such statutes were commonplace leading up to the Civil War. They restricted the definition of a lawful, moral marriage and the benefits that flowed from it, like citizenship rights and property inheritance (Pascoe 2009, 21, 27). Although their precise language differed, the statutes all had one feature in common: they restricted *white* people from marrying individuals of other races while allowing individuals of different minority groups to marry freely (120).

In 1871, Illinois repealed its ban on interracial marriage. The repeal came during a wave of similar repeals at the state level in the years following the Civil War (Pascoe 2009, 40). Although some state statutes restricting interracial marriage were struck down in state courts as unconstitutional, other states, like Illinois, repealed their statutes, perhaps in part to avoid any constitutional controversy (40).[6] And yet, even without a state statute criminalizing interracial relationships, interracial couples in Progressive-Era Chicago still faced scrutiny from police and sometimes punishment from the courts for their legal union. As Chicago politicians and social reformers became focused on taming the perceived rise of "vice" in the city, interracial intimacy became wrapped up in the crusade to police social and moral norms.

During the Progressive Era, Chicago's reformers developed an obsession with the concept of "vice," an amorphous and illusive term that became a moniker for the city's anxieties about sexuality, modernity, crime, and deviance. In 1910, the Chicago City Council created the Vice Commission, a group of thirty city leaders tasked with studying the problem of vice in the city and offering solutions (Chicago Vice Commission 1911, 5–6). The resulting report, *The Social Evil in Chicago*, provides a glimpse into what exactly "vice" meant, at least to this group of doctors, religious leaders, academics, and judges. The report is first and foremost about prostitution, seen

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convictions against interracial couples. Studying low-level criminal charges necessarily requires grappling with gaps in the historical records, as trial court transcripts, orders, and police records are incomplete.

5. Illinois Revised Statutes § 3 (1829).

6. The question of whether these statutes violated the Fourteenth Amendment remained open until 1883, when the U.S. Supreme Court upheld an Alabama state law criminalizing interracial marriage as constitutional in *Pace v. Alabama*, 106 U.S. 583 (1883). Such laws would not actually be declared unconstitutional by the U.S. Supreme Court until decades later in *Loving v. Virginia*, 338 U.S. 1 (1967).

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as a perverse symptom of the fraying of traditional marriage. The report attributes rise in "sexual vice" to a rise in divorce, in turn attributed to "unhappy marriages" between people who are "degenerate" (41–42).[7]

The Social Evil presents a narrative of the typical pathway into a life of vice. First, modern urban entertainment, like vaudeville shows, served as the gateway to prostitution (Chicago Vice Commission 1911, 125–26). With prostitution came "attendant vices," which were the immoral practices of women drawn into prostitution —and the men who utilized their services—like drinking, drug use, and gambling (45). According to the Commission, "[t]he whole tendency of modern life" placed a "greater strain on the nervous system" of men and women, so that they "cannot but help, to a great extent, develop considerable eroticism" (199). The writers of *The Social Evil* feared that modernity itself produced the problem of sexual vice.

With a perceived rise in vice came a strong desire to control it.[8] Chicago's Police Department and Municipal Court System deployed a set of low-level, open-ended criminal charges, which I call morals law, to crackdown on vice. These crimes included vagrancy,[9] disorderly conduct,[10] adultery,[11] fornication, and prostitution offenses.[12]

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7. Throughout this article, I employ terms used during the Progressive Era to describe people thought to have mental or physical disabilities. One such term is "degenerate." Other terms include defective, subnormal, abnormal, feeble-minded, and dementia praecox. These terms are rightfully considered offensive today. I use them to best represent the thinking of the time, never to endorse it.

8. Historian William Novak (2021, 67) argues that in this period an "enlargement of problems, pathologies, and offenses . . . insistently broad[ed] the horizon of social police and expand[ed] conceptions of 'offense' and 'criminality.'"

9. Both Illinois state law and Chicago city ordinances criminalized vagrancy. State law criminalized "[a]ll persons who are idle and dissolute . . . ," and included some enumerated examples ("runaways, pilferers, confidence men") and a catch-all term ("lewd, wanton, and lascivious persons"). Revised Statutes of Illinois § 38.270. The language of Chicago's city ordinance paralleled state law. See Municipal Code of Chicago § 1476 (1905). This municipal code violation was adopted after Municipal Court leaders proposed the addition of such a law in 1906 to "reach the habitual vagabond or hobo" because of the "somewhat alarming conditions of the tramp problem in this country." Municipal Court of Chicago, *First Annual Report 1906–07* (Chicago: Municipal Court of Chicago, n.d.), 32, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101534859&view=1up&seq=2. By 1913, the Chicago Police had begun to use vagrancy as a method "to 'clean up' the entire [vice] district with warrants charging women with having no visible means of support," a method that Judge Hopkins in the Morals Court endorsed to depopulate disorderly houses on the city's South Side (*Chicago Daily Tribune* 1913b, 3).

10. Illinois state law criminalized "open lewdness, disorderly conduct, or other notorious act of public indecency, tending to debauch the public morals." Illinois Criminal Code Vol. I § 38.55 (1921). Chicago's City Code provided a narrower definition of disorderly conduct: "All persons who . . . are idle or dissolute and go about begging; . . . all persons who are found in houses of ill-fame or gaming houses; . . . all persons who stand, loiter or stroll about in any place in said city waiting or seeking to obtain money . . . shall be deemed guilty of disorderly conduct." Chicago Municipal Code § 2655 (1922).

11. Illinois state law criminalized men and women "liv[ing] together in an open state of adultery, or fornication, or adultery and fornication." Illinois Criminal Code Vol. I § 33.11.

12. Illinois state law criminalized the following acts related to prostitution: abduction of a female, keeping or maintaining a disorderly house, keeping boats for the purposes of prostitution, inducing a chaste woman to enter a dance house or house of prostitution, unlawfully detaining a woman in a house of prostitution, allowing a woman under eighteen to live in a house of prostitution, and bringing a woman across state lines for prostitution. Revised Statutes of Illinois § 38.1, § 38.57, § 38.57a, § 38.57b, § 38.57c, § 38.57d, § 38.57e (1829). Chicago city ordinances criminalized keeping a house of ill-fame, patronizing a house of ill-fame, leasing a house for immoral purposes, soliciting for prostitution on the street, directing a person to a house of ill-fame, or gathering on the streets for immoral purposes. Chicago Municipal Code § 2656, § 2657, § 2659, § 2661, § 2663, § 2665 (1922).

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Morals law criminalized certain actions that were considered immoral, like begging or bringing a woman across state lines for prostitution. But the statutes also criminalized attributes. It was a crime to be "lewd, wanton, or lascivious," and "idle and dissolute," "disorderly," or "indecent." Today, these offenses—particularly those including subjective adjectival terms as criminal "acts"—might well be found unconstitutionally vague.[13] But at the time, there was no recognized constitutional limit on what kind of conduct a state could criminalize. Therefore, Illinois and Chicago were able to expand the arsenal of statutory offenses like these under the general state police power.[14]

During the Progressive Era, the police power was seen as an integral part of "well-ordered society," giving state governments "charged with the duty of conserving the safety" of its people the right and responsibility to pass reasonable regulations to promote health and welfare.[15] The maintenance of moral standards was seen as a part of public health, and a central purpose of what Ernst Freund called "[c]riminal justice, the proprietary action of the state, and the police power" (Freund 1907, 7).

Along with an expanded arsenal of crimes came a new, modern municipal court system in 1907.[16] The city previously had relied on justices of the peace to administer justice in low-level criminal cases (Willrich 2003, 3, 9). These justices, who typically had little formal legal education, worked from a patchwork of decentralized "justice shops" throughout the city and relied on the payment of direct fees for their livelihood (8–9). Chicago's Municipal Court system represented a shift toward the centralization and professionalization of the city's legal system (47). The pages of the Court's formal *Annual Reports* tell a story of efficient disposal of state and city offenses at Municipal Court branches across the city.[17]

Beyond simply enforcing the law, leaders of the Municipal Court were in direct conversation with the Illinois State Legislature and the Chicago City Council to shape the law to their liking. The Court lobbied the City Council to make its vagrancy law operative, to pass an adult probation law, and to create a farm colony for "mentally

13. In 1972, the Supreme Court struck down a Florida vagrancy statute as unconstitutionally vague, meaning it failed to give a person of ordinary intelligence fair notice that their conduct was unlawful. Such vagrancy statutes, the Court noted, gave state police nearly unfettered discretion to arrest. *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). For an excellent history of lead-up to the *Papachristou* decision, see Goluboff (2016).

14. The expansion of the criminal code led to an expansion in the number of arrests and in state power over the individual. As Roscoe Pound wrote in 1930, "Of the one hundred thousand persons arrested in Chicago in 1912, more than one half were held for violation of legal precepts which did not exist twenty-five years before" (Pound 1930, 23). For an overview of the use of police power to intrude into intimate relationships in modern U.S. history, see Canaday et al. (2021).

15. *Jacobson v. United States*, 197 U.S. 11, 25, 29 (1904).

16. Municipal Court of Chicago, *First Annual Report 1906–07*.

17. For an example of the wide range of cases the Municipal Court disposed of in a typical year, see Municipal Court of Chicago, *Third Annual Report 1908–09* (Chicago: Municipal Court of Chicago, n.d.), 10–11, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101534859&view=1up&seq=219); all Chicago Municipal Court records are available at the Chicago History Museum, Research Center, https://chhiso.ent.sirsi.net/client/en_US/public/search/detailnonmodal/ent:$002f$002fSD_ILS$002f0$002fSD_ILS:65086/ada?qu=court&d=ent%3A%2F%2FSD_ILS%2F0%2FSD_ILS%3A65086%7EILS%7E1&lm=ARCHIVES%2FMANUSCRIPTS&rt=false%7C%7C%7CAUTHOR%7C%7C%7CAuthor%2Fcreator.

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defective" criminals.[18] In 1915, Chief Justice Harry Olson and other court leaders worked with social activists to pass the Kate Adams Law, which "made it a misdemeanor to be an 'inmate' of a 'house of ill-fame' … or to solicit in the city," shifting prostitution from a fine-only offense to a crime punishable through jail or probation (Willrich 2003, 185). The Court thus became an active player in shaping the contours of the state's power to regulate the moral health of its people, giving itself more discretion in the process.[19]

In 1913, the city created a new specialized branch of the court system, the Morals Court, that would be authorized to hear criminal offenses "tending to debauch the public morals."[20] In his announcement of the Morals Court, Chief Justice Olson explained that its purpose was to eliminate the slums by eliminating the people who inhabited them. Olson believed that the city had to "start with the question of marriage of physically and mentally unfit persons" through "more drastic and uniform marriage laws" (*Chicago Daily Tribune* 1913a, 4). The Morals Court's main target was the prostitution running rampant on the city's South Side.[21] But lurking in the background was Olson's broader goal: using morals law to regulate the institution of marriage, allowing "good" marriages to flourish while ferreting out "bad" marriages that produced what he believed were mentally deficient offspring. Olson was a eugenicist and promoted his eugenical theories on the bench (Laughlin 1922, v–vi). In service of his eugenicist project, Olson also pushed for the appointment of Dr. Harry Hamilton Laughlin, a central figure in the movement to legalize eugenical sterilization, to the court.[22]

This web of vice control and expanding state power inevitably caught many interracial couples. For instance, in 1923, William Gray, a Black man, was arrested just outside the Morals Court when a police officer witnessed him take the arm of Violette Laue, a white woman (*Chicago Defender* 1923a). The police charged him with disorderly conduct. According to an article in the *Chicago Defender*, Morals Court staff informed Mr. Gray that "they would see to it that he was severely punished for his conduct in leaving the court room with a white girl" (1923a, 4). Mr. Gray was able to hire a defense

18. *First Annual Report* 1906–07, 19; Municipal Court of Chicago, *Fifth Annual Report 1910–11* (Chicago: Municipal Court of Chicago, n.d.), 74, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101534859&view=1up&seq=504; Municipal Court of Chicago, *Twelfth, Thirteenth, and Fourteenth Annual Report 1917–20* (Chicago: Municipal Court of Chicago, n.d.), 43–44.

19. The Municipal Court's practice is consistent with broader development in public health during the Progressive Era. According to historian William Novak, "Public health did not exist solely in the mind and rhetoric of an isolated judge or sanitary reformer. It was an ongoing practice and technique of governance. It was institutionalized in the myriad actions of the central constituents of the nineteenth-century American polity: mayors and legislators, local administrative agencies, and state courts" (Novak 1996, 198).

20. Municipal Court of Chicago, *Sixth Annual Report 1911–12* (Chicago: Municipal Court of Chicago, n.d.), 76, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101534917&view=1up&seq=15.

21. The emphasis on prostitution was directly linked to protecting the public morals and the public health (Willrich 2003, 172–73).

22. Municipal Court of Chicago, *Sixteenth, Seventeenth, and Eighteenth Annual Report 1921–24* (Chicago: Municipal Court of Chicago, n.d.), 14. For a more detailed description of the court's connection to eugenics, see Part III.

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attorney, who argued that the Morals Court was prejudiced against his client and successfully requested a change of venue to another branch of the Municipal Court.[23]

At Mr. Gray's hearing, two individuals from the city's health department testified against him, arguing that his actions—holding a white woman's arm in public—constituted disorderly conduct, which was defined under state law as "open lewdness … tending to debauch the public morals."[24] The judge dismissed the case, finding the city had failed to prove the defendant acted in a disorderly manner. Mr. Gray's interaction with the city's legal system highlights the broad discretion state actors had to prosecute individuals for violating a perceived group norm.

Legally married interracial couples in the city faced similar scrutiny when they appeared together in public. In 1924, a police officer questioned Mr. and Mrs. Parson, an interracial married couple who were taking photographs of Lake Michigan. The officer asked if they were legally married. The couple explained that they had been married for three years. Not believing their story, the officer followed them all the way home from the lake (*Chicago Defender* 1924).

In another instance, a friendly interaction between a white woman and a Black man on a city sidewalk led to interrogation, warrantless search, and arrest. When four police officers witnessed Ethel Stokes, a white, Jewish woman, stop on a street corner to "have a moment's chat" with her friend, a Black man, they arrested her on the spot and brought her to the police station to be questioned (*Chicago Defender* 1923b, 3). The officers demanded an objective answer about her race. According to Ms. Stokes, the officers asked her, "What are you, white or Colored?" and interrogated her on her marriage. Upon learning she was married to a Black man, the officers questioned why she didn't marry a Jewish man or a "Gentile" (3). After the interrogation, the officers took her to her home and forced her to produce her marriage certificate to prove the legality of her relationship. When her husband arrived, "he was promptly arrested and locked up" (3). The newspaper article detailing Ms. Stokes's interaction with the police does not explain what charge was brought against her husband, but it's certainly possible that he was arrested on a morals violation, perhaps disorderly conduct like Mr. Gray or fornication like Mr. Wilburn, two other Black men who dared to be in consensual relationships with white women.

The Chicago Police demanded that Ms. Stokes tell them whether she was "white" or "colored." If she had told the officers she was "colored" then, presumably, they would not have questioned the legality of her relationship. But because she identified herself as "white," the officers inverted her relationship into something presumed unlawful. The historical record does not allow us to know how common these interactions between the police, courts, and interracial couples were during this era. It's not even clear how many interracial couples lived in Chicago, as these statistics were not recorded (Roberts 1940, 11). Yet the record shows that these interactions happened, and that by playing out day after day, they embedded interracial intimacy within the meaning of morals law,

23. Many Black defendants were not as lucky as Mr. Gray. In remarks given to the Chicago Commission on Race Relations, Judge Wells M. Cook stated, "The handicap that the colored man seems to be under in the severe cases is that he frequently does not get a good lawyer. As a rule he is not represented by as good a lawyer as the white. Of course there are capable Negro lawyers in Chicago, but there were few such retained in the cases tried before me" (Chicago Commission on Race Relations 1922, 354).

24. Illinois Criminal Code Vol. I § 38.55 (1921).

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transposing lawful marriage into an unlawful, immoral form of vice. And by forcing individuals to place themselves in clear-cut, racial boxes, such interactions were making the meaning of race itself.

II REGULATING INTERRACIAL SPACE IN CHICAGO

The same impulse to criminalize interracial sexuality played out on a larger scale in the city's sensational raids of "black and tan" clubs and disorderly hotels.[25] These spaces blurred the unofficial yet sharp boundaries between Black and white space in the city. Police raids of these businesses transformed them into inherently unlawful spaces, signaling that interracial intimacy would not be tolerated in public.

In 1930, a white man named Charles McDonald (1930, 14) wrote a letter to the editor of the *Chicago Defender* about interracial relationships, stating "I for one am for it." But he lamented that as a "sincere white person," he had no chance to meet a "decent colored person" in the city. He implored the paper to publish the location of spaces in the city where white and Black residents could meet each other. Mr. McDonald's letter frames the problem of segregation in Chicago as one created and easily remedied by individual choice, when in reality, the geographic segregation in Chicago was the entrenched result of racially charged violence and conscious decisions from city leadership to crackdown on interracial socialization as a crime.

In 1922, the Chicago Commission on Race Relations, which had been tasked with exploring the causes of the bloody 1919 Chicago Race Riot, published a comprehensive report entitled *The Negro in Chicago*. The report provides a picture of the racial boundaries drawn in the city during the Progressive Era. The Commission explained that although there was no Jim Crow in Chicago, "unofficial discrimination … frequently creeps in" (277). This unofficial discrimination often manifested in the form of divided physical spaces. At Lake Michigan, there were no signs to cordon off areas for white bathers and Black bathers, but city police officers would nonetheless advise Black residents not to cross the invisible line between the beaches (277–78). Black residents in the city could legally patronize any business or restaurant, but white-owned businesses frequently turned them away (310–11, 320). White residents complained to the commission that recent Black migrants from the South "sit all over the cars," rather than remain in the back (302). Even the Morals Court was segregated, with one attorney for Black defendants and another for white.[26]

Black Chicagoans were, by and large, forced to live in a specific area of the city. As the Black population in the city grew during the Great Migration, Black residents were confined to an area on Chicago's South Side known as the "Black Belt" or

25. "Black and tan" club was a term of the era for spaces where individuals of different races socialized together. "Disorderly hotels" were hotels that rented out rooms to people engaged in prostitution or other forms of unlawful intimacy, like adultery or fornication.

26. *Sixteenth, Seventeenth, and Eighteenth Annual Report 1921–24*, 114. Moreover, the percentage of Black defendants in the Morals Court far exceeded the percentage of Black residents in the city's population. A 1913 Chicago police report noted that whereas Black women were only 2.4 percent of the city's population, they made up 14.8 percent of the women arrested, and 17.1 percent of the women convicted. By 1930, 70 percent of the women brought before the Morals Court on prostitution charges were Black (Willrich 2003, 197, 205).

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"Bronzeville."[27] Within the area, which was roughly seven miles long and one mile wide, a "quarter-million colored people were packed on top of one another" (Wilkerson 2010, 268). New migrants arrived to already overcrowded apartments, but there was no room to grow; attempts to rent or buy apartments outside of this tightly packed neighborhood were met with death threats, violence, and bombings from white residents (272).[28]

Bronzeville was proximate to the city's old vice district, the Levee, and after the police shut the Levee down in 1914, crime swiftly swept into the neighborhood (Chicago Commission on Race Relations 1922, 93, 343).[29] At the beginning of the twentieth century, the Chicago Police Department, corrupted by organized crime, turned a blind eye to illegal vice so long as it stayed contained within Black neighborhoods.[30] Where migrants settled, vice quickly followed, looking for places to operate undisturbed by the law (Muhammad 2010, 343). The Chicago Commission on Race Relations concluded that Black residents tended to live in vice districts for reasons outside of their control; unwelcome in white neighborhoods, lacking political representation, and working for low wages, they had little power to fight back (Chicago Commission on Race Relations 1922, 344). Although the proximity to vice was outside of Black residents' control, it reinforced a narrative in white society that Black migrants were inherently immoral, unfit for city life, and prone to criminality. This narrative built upon a long-standing stereotype that painted Black men as "constitutionally indolent, voluptuous, and prone to vice" (Muhammad 2010, 20–21).

During the Progressive Era, many white reformers in northern cities put money toward funding Black education in southern states and condemned lynch mobs as savage and unlawful (Muhammad 2010, 27–28). And yet, the general attitude of these same reformers to Black residents of their own cities was one of "hesitation and withdrawal," leaving recent migrants to fend for themselves without robust support from social services (28).[31] This ambivalence to local Black communities was what

27. The Bronzeville neighborhood spanned from Twelfth to Thirty-first Street and from Wentworth to Wabash Avenue (Wilkerson 2010, 268; Chicago Commission on Race Relations 1922, 107). For more information about the neighborhood's rich history, see Bronzeville Historical Society.

28. Between 1917 and 1921, there were a total of 58 bombings of houses that Black Chicagoans moved into in the white neighborhood of South Shore alone (Wilkerson 2010, 397).

29. The Levee, which was an open secret at the turn of the century, spanned north/south from Sixteenth to Twenty-Second Street and east/west from Dearborn Street to Armour Avenue (*Chicago Daily Tribune* 1914b, 2). In 1912, the city appointed a special committee to explore how to shut down the Levee district. A grand jury conducted under Illinois State Attorney J. E. W. Wayman recommended the police shut down the entire district through a series of spectacular raids and injunctions. It wasn't until 1914 when the Levee was "shut down" for good. Even still, the vice businesses simply dispersed into other areas on the city's South Side (*Chicago Daily Tribune* 1914b). For a broader discussion of abatement and injunction acts as tools to police vice districts, see Novak (2021, 71–79). For more information on the Levee, see Connelly (1980, 91–113; Blair 2010, 215–16).

30. According to the Commission on Race Relations, "[T]he chief of police in 1912 warned prostitutes that so long as they confined their residence to districts west of Wabash Avenue and east of Wentworth Avenue, they would not be disturbed" (1922, 343). For the Chicago police, thanks to graft, turning a blind eye to illegal activity was a lucrative business (Connelly 1980, 96). And for white vice owners and corrupt politicians, illicit activities could be hidden "under a cover of blackness" (Muhammad 2010, 226). There were some raids during the 1910s that made the papers, but nowhere near the density of raids in the 1920s to come. For example, see *Chicago Daily Tribune* (1916).

31. According to a journalist of the era, Ray Stannard Baker, "Northern white people would seem to be more interested in the distant Southern Negro than in the Negro at their doors" (Muhammad 2010, 226).

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sociologist Gunnar Myrdal called the "Northern Paradox" in his 1944 study on race relations (Myrdal 1944, 1010). White, northern Progressives were quick to condemn the overt, violent discrimination in the Jim Crow South while simultaneously perpetuating more subtle forms of discrimination and intolerance at home.[32]

At first, this apathy from Progressive, white social reformers in Chicago led to inaction. Crime persisted in Bronzeville virtually unchecked, circularly confirming to many white people their preconceived, racist belief that Black migrants were inherently immoral. Reformers simply placed the onus on the community itself to quash vice in Bronzeville; a bailiff in the Morals Court once remarked to a journalist, "it [is] a shame that the Colored people did not do something" about it (*Chicago Defender* 1917, 1). In reality, Black community leaders worked hard to better their own neighborhood and drew frequent attention to the indifference of the city's white leaders, who did not seem to care about ridding Black communities of vice (Blair 2010, 188–90).

When, in the 1920s, the Chicago Police Department began taking a more active role in cracking down on vice, it took little account of the voices of those who actually lived in Bronzeville.[33] The crime problem was instead framed as a blight on the city's overall image. Police leadership like Lieutenant Michael W. Delaney remarked, "Cabarets never close. Gambling is wide open. Women walk the streets. Every statute enacted has been violated with impunity. We must clean up" (Kingallen 1920, 13). By 1923, Police Chief Fitzmorris went as far as ordering a police officer to be stationed at the front and rear of every known disorderly house in the city to make sweeping arrests (*Chicago Daily Tribune* 1923b).[34]

The police employed dragnet tactics in Bronzeville, conducting large-scale, sensational vice raids that pulled patrons of dance halls, disorderly houses, and black and tan clubs into police wagons, jail cells, and courtrooms. And the police often failed to exercise basic tenets of due process along the way.[35] By simply existing in a location that was considered "unlawful," a person faced the threat of arrest, conviction, and punishment.

One of the major targets of these police raids were the black and tan clubs of the city where Black and white people socialized together, often coupled with other emblems of Prohibition-era vice, like drinking, gambling, and dancing (Chicago Commission on Race Relations 1922, 323–24). In newspaper accounts describing a

32. According to Myrdal, "almost everyone is against discrimination in general, but, at the same time, almost everybody practices discrimination in his own personal affairs" (Myrdal 1010). In the *Negro in Chicago*, the Chicago Commission on Race Relations noted that white Chicagoans possessed many of the same prejudices—with the same "emotional intensity"—toward Black Chicagoans as white southerners did toward their own Black neighbors (433–39).

33. This isn't to say that people who lived in Bronzeville didn't want the problem of vice tackled. In fact, the Chicago Commission on Race Relations, which included Black community leaders, encouraged the police to "rid the city's colored section of the vice and prostitution" in its report (Wilkerson 2010, 273). But the police and court response centered the opinions of white city leaders.

34. "Disorderly house" was a term of the era for a place where prostitution occurred.

35. For instance, in an early 1913 vice raid, Judge Hopkins heard charges against eighty women arrested all at once (*Chicago Daily Tribune* 1913c). At the trial, a defense attorney told Judge Hopkins that the women had been held at the police station for an entire day without formal booking. In response, Major Funkhouser of the Chicago Police Department said there were so many women, it was impossible for the police to secure warrants and proper booking expediently.

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raucous night in these clubs, the journalists described the "intermingling of races," with people of "all the tints of the racial rainbow, black and tan and white, dancing, drinking, and singing" as the most scandalous detail (323–24).[36] These clubs were an integral part of "slumming," where middle-class white men sought a night of illicit, exotic fun outside the bounds of civilized morality (Blair 2010, 217).

During the 1920s, various Chicago mayors and chiefs of police made it a governmental priority to shut down interracial spaces through a variety of techniques—divesting the clubs of city licenses, arresting their owners, and conducting late-night raids that became front-page news.[37] In 1923, Mayor William Dever revoked the licenses of "six of Chicago's most notorious black and tan cafes," stating that he would "not permit 'rotten cafes' to undermine the public health and morals" in the city (*Chicago Daily Tribune* 1923a, 4). That same year, the police conducted a late-night raid of two famous disorderly hotels: the Vincennes and LaBelle. In a sensational report in the *Pittsburgh Courier*, a reporter described officers emerging "accompanied by a select company of attractive white girls and their colored companions and white libertines with their gay, senseless colored men," all of whom were charged with disorderly conduct (1923, 2).

According to testimony from city leaders printed in newspapers and reports at the time, the purpose of these raids was to clean up the city from all kinds of vice; the sensual dancing between Black and white individuals was only one element of a broader vice culture that needed to be stopped (Kingallen, 1920). But the raids on black and tan clubs also grew out of the sensationalized narrative known as "white slavery"–the idea in Progressive-Era popular culture that innocent white women were being lured to the big city and corrupted into prostitution by "dark" immigrants and Black men.[38]

In 1907, George Kibbe Turner published an influential article entitled *The City of Chicago: A Study of the Great Immoralities*, in which he claimed there was a "well organized traffic in women, a very real white slave market" in the city (Donavan 2006, 61). He blamed the rise in crime, including the trafficking of these innocent white women, on the wave of recent European immigrants and on "the vicious negro from the countryside of the South" whom he claimed "furnish an alarming volume of savage crime" (61). Authors like Turner, whose works were immensely popular at the time, overtly linked tackling the problem of vice with the higher purpose of preserving white purity (56–88).

In a city with sharp delineations between Black and white space, socialization between two races broke down the norm of separation. Black and tan clubs became frequent targets of police and court scrutiny as perceived sites of immorality that threatened white purity. During World War I, the vice raid also became a tool of public health necessity, when Illinois greatly expanded the ability of the Chicago Police and

36. In 1923, Mayor Dever characterized black and tan cafes as "revolting" because of "soul kisses between colored men and white women" (*Chicago Daily Tribune* 1923a, 4).

37. For example, see *Chicago Daily Tribune* (1923a, 4); *Chicago Daily Tribune* (1923c); *Pittsburgh Courier* (1923); *L. A. Times* (1926); *Pittsburgh Courier* (1927).

38. Many of the villainous men in these narratives were called "white slavers." Although labeled as "white," authors of white slave tracts took great care to set them apart as foreign. For example, Reginald White Kauffman described a white slaver in his novel *The House of Bondage*, as "a member of the persistent race" with foreign speech and hair that was "black and curly" (Donavan 2006, 114–35).

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the Municipal Court to detain and test women to combat the threat of venereal disease.[39]

Whether framed as a tool to quash vice, protect white purity, or combat venereal disease, vice raids brought vast numbers of defendants before the Morals Court. It's clear from the pages of the Court's annual reports that its leaders believed that while visible, public displays of immorality deserved to be restricted, some men and women could do what they wanted behind closed doors. The Municipal Court's *Tenth and Eleventh Annual Report* states that when "mature men and women" were arrested in "raids on questionable hotels" on charges of fornication, it did little good to punish them, as "[t]he large majority of this class of offenders are, in other respects, law abiding citizens."[40] This report suggests that the Morals Court was chiefly focused on punishing *public* immorality.

Although vice raids were initially used as a tool to combat public immorality, city officials also raided the private homes of interracial couples. According to a 1924 *Pittsburgh Courier* article, the Chicago police were "conducting wholesale raids without reason on the homes" of families in Bronzeville.[41] Officers would break into homes under the pretext of making vice arrests without search warrants, after which bondsmen would pay them for the heads brought into the station. Police flouted the rights of suspects for the sake of cleaning up the city (or for self-serving, corrupt reasons), bringing them into the Morals Court where they could be severely punished at the judge's discretion (Muhammad 2010, 251). Bronzeville was the neighborhood where interracial couples most often lived in Chicago. Because they faced violence from white neighbors, Bronzeville provided them greater safety, but it also subjected them to greater police scrutiny (Roberts 1940, 91–92).[42]

The police's vice raids—both public and private—created negative consequences for interracial couples in the city. The raids brought a number of these couples before the Morals Court, which reinforced a narrative that interracial couples were inherently

39. During the war, the Morals Court had a general practice of testing every woman arrested on a morals charge for venereal disease under an Illinois statute that required judges to send any defendant who even *appeared* to be suffering from venereal disease to a hospital or sanitarium (Willrich 2003, 201–02). And in 1918, the federal government passed the Chamberlain-Kahn Act, which authorized the government to quarantine any woman suspected of having a venereal disease. See Chamberlain-Kahn Act of 1918, Pub. L. 65-193, 40 Stat. 845 (1918). Under the Act, a diagnosis of venereal disease served as proof of prostitution. Since prostitution was illegal under state law, a diagnosis of disease could attach any of the intrusive punishments available to Municipal Court judge.

40. Municipal Court of Chicago, *Tenth and Eleventh Annual Report 1915–17* (Chicago: Municipal Court of Chicago, n.d.), 87, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101534917&view=1up&seq=525.

41. *Chicago Daily Tribune* (1918, 15). A common alleged charge lodged against Bronzeville residents was "keeping a disorderly house." For example, Elizabeth Wolff, a woman who ran a laundry and had been married for nineteen years, was arrested after police raided her home and found her sitting with two friends, one male and one female, in her living room (*Chicago Daily Tribune* 1918). She was charged with "keeping a disorderly house" and taken to the Iroquois Memorial Hospital where she was forced to take a blood test to prove she was not harboring a venereal disease. Even after the Morals Court found there was insufficient evidence of the crime, the judge nevertheless had her committed to the Lawndale Hospital to be sure that she was not contagious.

42. According to personal interviews conducted by Robert Edward Thomas Roberts, a master's student in anthropology studying interracial couples in Chicago in 1940, intrusions on private life were not uncommon for interracial couples. He interviewed one couple that was arrested, jailed, tested for disease, and evicted from their apartment, all without violating the law (Roberts 1940, 90).

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immoral. And, as the next section will show, the punishments that a low-level morals charge could bring could be quite intrusive and aggressive.

III PUNISHING INTERRACIAL INTIMACY

The Morals Court had jurisdiction over only low-level morals offenses that were, according to the statute books, punishable only by small fines or a jail sentence under a year.[43] But two aspects of the Municipal Court system vastly increased the discretion of Morals Court judges to issue additional, and often more intrusive, punishments for these low-level crimes: the passage of the Adult Probation Act in 1911 and the creation of a Psychopathic Laboratory in 1914. By coupling low-level, open-ended charges with a menu of options for punishment, the Morals Court had an immense amount of discretion to restrict individual liberty.

From the Municipal Court's inception, judges had lobbied the Legislature to pass an adult probation bill.[44] The Adult Probation Act, passed in 1911, gave judges in the Municipal Court the discretion to place first-time offenders of misdemeanor violations on probation for up to one year (Willrich 2003, 93). The Court's probation officers had broad discretion to surveil probationers, investigating "personal characteristics, habits, associations, and ... conduct" (94). Under the power granted by the Adult Probation Act, the Morals Court surveilled citizens in droves, increasing the intrusion of the state into daily life. For instance, during a large-scale vice raid of a disorderly house in 1917, Judge Fisher put all the women picked up by police under the surveillance of Mrs. Jessie Thomas, a probation officer (*Chicago Defender* 1917). Whereas a charge of disorderly conduct once required simply paying a fine, it could now lead to a full year under the eye of a reform-minded probation officer, patrolling for evidence of further indecency or immorality. Any small transgression could lead to more judicial scrutiny and punishment.

The Morals Court gained even more discretion over punishment with the creation of the Psychopathic Laboratory in 1914 (Willrich 2003, 241–77). The Morals Court's effort to control "vice" was just one arm of a broader Progressive project of using the law to control people considered "degenerate" through eugenics. The creation of the Psychopathic Laboratory represented the apex of the Municipal Court's commitment to codifying eugenical ideas into the city's legal system.

The eugenics movement in the United States gained prominence in the late nineteenth century, as American social reformers and scientists embraced the idea that heredity was the primary predictor of human intelligence and morality (Carlson 2011, 12–14). Eugenicists advocated for three major policies to combat social problems like

43. The order establishing the Morals Court in 1913 defined its jurisdiction to include the following offenses: (1) maintaining/patronizing a house of ill-fame, (2) enticing a female into a house of ill-fame, (3) enticing a female to cross state lines for fornication or prostitution, (4) living in an open state of fornication or adultery, (5) open lewdness or indecency, (6) selling obscene books or pictures, and (7) night walking. See Municipal Court of Chicago, *Seventh Annual Report 1912–13* (Chicago: Municipal Court of Chicago, n.d.), 93, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101534917&view=1up&seq=165.

44. *First Annual Report 1906–07*, 19. For an overview of the process by which Municipal Court judge McKenzie Cleland asserted influence over the passage of the Adult Probation Act, see Willrich (2003, 91–95).

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crime and poverty: categorization, segregation, and in some states, sterilization.[45] Progressive reformers believed that through physical and psychological examination, negative traits could be isolated and bred out of the human race through negative means (restricting reproduction) and positive means (promoting good marriages).[46] Eugenicists isolated "bad traits" by collecting data, using intelligence tests, and taking detailed family histories to fit individuals along a spectrum from normal to abnormal.

As Chicago professionalized and expanded its Municipal Court system, the Illinois State Legislature expanded the number of state "charitable institutions" and the state funding they received.[47] These charitable institutions, like the Northern Hospital for the Insane and the Asylum for Insane Criminals at Chester, were physically segregated spaces for people thought to suffer from certain "medical" diagnoses, like feeble-mindedness,[48] dementia praecox,[49] or insanity. And the list of people who were thought to be susceptible to these conditions included a shockingly broad swath of the population, ranging from people with alleged physical and mental disabilities, mothers of illegitimate children, alcoholics, criminals, and the poor.

The Morals Court sought to study its defendants "scientifically," collecting data on offenders to draw conclusions about the root causes of immorality (*Chicago Daily Tribune* 1914a).[50] The Court employed a female physician, Dr. Anna Dwyer, to examine female defendants and locate commonalities between them. In the first year of the Court's operation, Dr. Dwyer found that *over half* of the 639 female offenders she examined were "mentally deficient," possessing a "subnormal" level of intelligence.[51] Court leaders used her findings to justify a shift in sentencing from retribution to

45. With advances in medical technology, many eugenicists argued sterilization was a humane prophylactic against the passing on of degenerate genes. Chicago's roots in this movement ran deep. In fact, the use of vasectomies to "treat" degeneracy may have actually originated in an 1899 article by a physician at the Chicago Medical School, Albert Ochsner, who first postulated that the procedure was a humane way to allow the mentally deficient to "rapidly disappear" (Ochsner 1899; Carlson 2011, 19). Ochsner's paper eventually inspired an Indiana prison reformer to lobby the state legislature to pass the first compulsory sterilization law in the country in 1907 (Carlson 2011, 20). For a discussion of eugenical sterilization as a form of social policy, see Molly Ladd-Taylor (2021).

46. The Municipal Court of Chicago wholeheartedly embraced the connection between heredity and rejected the influence of environment on social problems like crime. The *Fifteenth Annual Report* explained that "[t]he improvement of the mentality and character of the race can be only done through breeding. Environment, sociology, pedagogy, cannot usurp the place of breeding—a cabbage will produce a cabbage and a rose a rose, in spite of all" Municipal Court of Chicago, *Fifteenth Annual Report 1920–21* (Chicago: Municipal Court of Chicago, n.d.), 182.

47. For instance, between 1901 and 1909, the state more than doubled the yearly appropriations to state charitable institutions. See Laws of Illinois (1901), 18; Laws of Illinois (1909), 30–32.

48. The Municipal Court of Chicago's writing on feeble-mindedness never clearly defines the term. It's generally referred to as a term for people possessing below-average intelligence and an inability to control impulses (*Seventh Annual Report 1912–13*, 95).

49. According to the Municipal Court, dementia praecox appeared in individuals with "no conscience," who were likely to commit "fundamental crimes, such as robbery, burglary, rape and murder" (Laughlin 1922, 232). Although the definition suggests the term only included people convicted of serious felonies, in 1922, Chief Justice Olson remarked that about 36 percent of female defendants and 30 percent of male defendants in the Morals Court were dementia praecox.

50. *Seventh Annual Report 1912–13*, 93–95.

51. *Seventh Annual Report 1912–13*, 93–95. In 1919, Judge Cook opined in a *Chicago Daily Tribune* article that a full 50 percent of the girls in the Morals Court during his tenure were feeble-minded (1919, 11).

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reform.[52] Practically speaking, this meant that judges in the Morals Court came to see fines as a "misconceived remedy" for prostitution and other vice infractions because so many criminal defendants were "feeble-minded" individuals "obeying impulses which they [could not] control."[53] Instead, a judge might choose to sentence an individual to probation, allowing a state official to surveil and attempt to reform bad behavior. For a smaller subset of individuals perceived by the court as too morally and mentally deficient to be capable of reform, judges often concluded they must be isolated from society and permanently controlled by the state.

In 1914, Municipal Court leaders created the Psychopathic Laboratory, a special branch of the court devoted to the scientific study of defendants.[54] The lab put the goals of the eugenics movement into practice. It amassed data on the psychological and physical make-up of criminals, using questionnaires, a drawing test, and the Binet-Simon intelligence scale.[55] Relying on that data, the lab identified individuals to isolate from society in sex-segregated institutions that restricted their ability to reproduce.[56]

The Psychopathic Laboratory's "study" of criminal defendants led to a handful of common diagnoses with labels like insanity, dementia praecox, and most commonly, feeble-minded. At the time, these were considered medical terms with legal significance. Labeling someone "feeble-minded" had power. But it was also an invention, a fiction, an unreality. It was a catch-all term for people who, according to a physician of the era Walter Fernald, ranged from slightly "below the normal standard of intelligence" to "the profound idiot" (Lombardo 2022, 15). In the most infamous case about state control of the feeble-minded, *Buck v. Bell*, the Supreme Court's cursory three-page opinion never even defined the term.[57] "Feeble-minded" had a shared meaning that felt obvious and natural to reformers, generally accepted as an immutable and biological characteristic, despite its breadth and ambiguity.

Once diagnosed by the lab, the Municipal Court had legal power to commit defendants to state institutions, even if they were arrested on a minor charge. Morals Court judges could refer any defendant to the Psychopathic Laboratory. According to the head of the lab, nearly 90 percent of the women referred from the Morals Court were subnormal in some manner.[58] If the doctors determined the individual to be

52. The shift from retribution to reform also came from a changed conception about crime itself. In the Victorian Era, crime was seen as "the product of the freely willed choices, flawed characters, or sinful natures of autonomous individuals" (Willrich 2003, xxii). But in the Progressive Era, the concept gave way to a new framing. Social reformers believed that crime was a product of one's environment, heredity, or both. When criminals were seen as the product of individual poor choices, a retributive justice system focused on punishment made sense. But when crime was seen as a product of factors outside of a person's control, it no longer made sense simply to punish. Instead, reformers believed a crime should be met with social reform to the conditions that created it where possible.

53. *Seventh Annual Report 1912–13*, 95.

54. Municipal Court of Chicago, *Eighth and Ninth Annual Report 1913–14* (Chicago: Municipal Court of Chicago, n.d.), 8, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101534917&view=1up&seq=343.

55. *Eighth and Ninth Annual Report 1913–14*, 21–23.

56. *Twelfth, Thirteenth, and Fourteenth Annual Report 1917–20*, 252. The lab's leaders hoped to convince the Illinois State Legislature to also pass a sterilization statute, but it never could (51). The two solutions—institutionalization and sterilization—were seen as better tools to combat what eugenicists in the Psychopathic Laboratory referred to as "unfit parenthood" than legal restrictions on marriage, which would "mean nothing to the average incompetent" (51).

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

58. *Tenth and Eleventh Annual Report 1915–17*, 138.

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mentally deficient, they could recommend commitment or initiate a separate court action to force commitment.

Admission into state hospitals could thus be court-ordered and potentially indefinite. If an individual was "feeble-minded," state law permitted "any reputable citizen of the State" to file a petition in court to determine if the individual was "dangerous to the welfare of the community."[59] If the court found an individual was feeble-minded and dangerous, it could either appoint a guardian or order the person be sent to a state or state-licensed private institution.[60] Once admitted a patient could only be discharged when a separate court action found it to be justified based on considerations of the welfare of the individual and his community.[61]

Returning to the story of Mr. Gray, the Black man arrested for holding a white woman's arm in the lobby outside of the Morals Court, the facts of his case demonstrate the danger of a low-level charge for individuals in interracial relationships. Although Mr. Gray's case was dismissed, it's easy to see how it could have come out differently. A charge of disorderly conduct could lead to a year in prison, a year under the surveillance of a probation officer, or the potential for indefinite commitment in a state mental institution. Although there is nothing in the report of Mr. Gray's case to indicate that he possessed below average intelligence, the city's decision to bring two health department officials to his hearing stands out as a potential attempt to argue for his commitment, as state law required the testimony of two physicians to commit someone against their will.[62] All those consequences could flow from the judgment of an individual police officer that a Black man holding the arm of his white companion tended to debauch the public morals.

Some of the interracial couples brought before the Morals Court were not as lucky as Mr. Gray. Many were no doubt referred to the Psychopathic Laboratory, where race scientists then pathologized people in interracial relationships as biologically subnormal and hypersexual. The Municipal Court's *Tenth and Eleventh Annual Report*, published in 1917, provides the most detailed window into the lab's work. According to the report, a total of 947 cases from the Morals Court had been referred to the lab since 1914.[63]

The report breaks down 701 of the 947 total cases referred to the lab from the Morals Court.[64] It delineates cases based on mental diagnoses along a spectrum from normal to abnormal, providing a snapshots into the specific facts of different cases within each category. For instance, under the category "Low Grade Sociopaths," the report lists one case: "[c]ase, age 31, dementia praecox; four arrests in Morals Court and three previous arrests, six as an inmate of disorderly house; one for burglary."[65] These case snapshots all share common elements: age, mental diagnosis, and crime.

Within this report, nine case snapshots reference interracial relationships. Several explain that the defendant was physically near or living with a person of another race when arrested. For instance, one such case description describes a woman as "age 24,

59. Illinois Criminal Code Vol. I § 23.324.
60. Illinois Criminal Code Vol. I § 23.330.
61. Illinois Criminal Code Vol. I § 23.335.
62. Illinois Criminal Code Vol. I § 23.328.
63. *Tenth and Eleventh Annual Report 1915–17*, 124, 200–11.
64. *Tenth and Eleventh Annual Report 1915–17*, 200–11.
65. *Tenth and Eleventh Annual Report 1915–17*, 201.

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dementia praecox, white; lives with a colored man."[66] Another woman is described as "married to white man with whom she has a little girl, age seven," but found "consorting with a Chinaman."[67] Yet another reads, "age 20, psychopathic, alcoholic, colored; arrested with a white man."[68] Other defendants brought into the lab are described as "white; was living with a colored man," "psychopathic white man, … arrested for living with negress," "white: arrested in hotel with colored girl," "colored; was with white woman in a raid."[69]

Other case descriptions note that the defendant was married to a person of another race. A 21-year-old white woman who was diagnosed with "dementia praecox with moral defect" was described as having been "in reform school three years, was married to a colored man, deserted him, and now living with another colored man."[70] A 26-year-old woman, also diagnosed with "dementia praecox," was described as "mental level 9.6 years, alcoholic, white, married to colored man"; her record also notes that she previously had "six arrests in Morals Court, soliciting and drinking."[71] The most striking feature of these case snapshots is that they do not mention the crime that resulted in their referral to the Psychopathic Laboratory. Every other case snapshot identified the individual's mental disorder and crime. For these people, instead of a description of their crime, the lab recorded the fact that they had a relationship with someone of another race.

The Psychopathic Laboratory was one aspect of a broader crusade of Municipal Court leaders like Chief Justice Olson and lab scientist Harry Laughlin to implement eugenical sterilization statutes across the country to further the goal of racial purity (Laughlin 1922, vii). Within this eugenical program, interracial relationships were seen as both the symptom and the disease. Being "mixed stock" made you more likely to be degenerate, and one of the symptoms of degeneracy was hypersexuality, often characterized by an attraction to someone of the opposite race (364).

The Psychopathic Laboratory's seminal report, *Eugenical Sterilization in the United States*, lauded individuals of "pure stock" while condemning those of "mixed stock" as mongrels "of an undesirable combination of characters" (364). Municipal Court leaders describe the problem of mixed-stock individuals under the same racist logic frequently deployed in southern courtrooms when adjudicating cases under "antimiscegenation" statutes. For instance, in a 1924 annual report, Harry Laughlin penned an essay called *Human Heredity* that describes the twenty-four chromosomes that "are the physical carriers of heredity," which "they call the germplasm" or the "blood" of race stock.[72] An accompanying illustration (see Figure 1) entitled the *Chromosomes of Man* shows the twenty-four chromosomes of a white individual and a "Negro" individual creating a "Negro" offspring.[73]

66. *Tenth and Eleventh Annual Report 1915–17*, 201.
67. *Tenth and Eleventh Annual Report 1915–17*, 200.
68. *Tenth and Eleventh Annual Report 1915–17*, 201.
69. *Tenth and Eleventh Annual Report 1915–17*, 205, 207, 208, 210.
70. *Tenth and Eleventh Annual Report 1915–17*, 203.
71. *Tenth and Eleventh Annual Report 1915–17*, 204.
72. *Sixteenth, Seventeenth, and Eighteenth Annual Report 1921–24*, 184.
73. *Sixteenth, Seventeenth, and Eighteenth Annual Report 1921–24*, 187.

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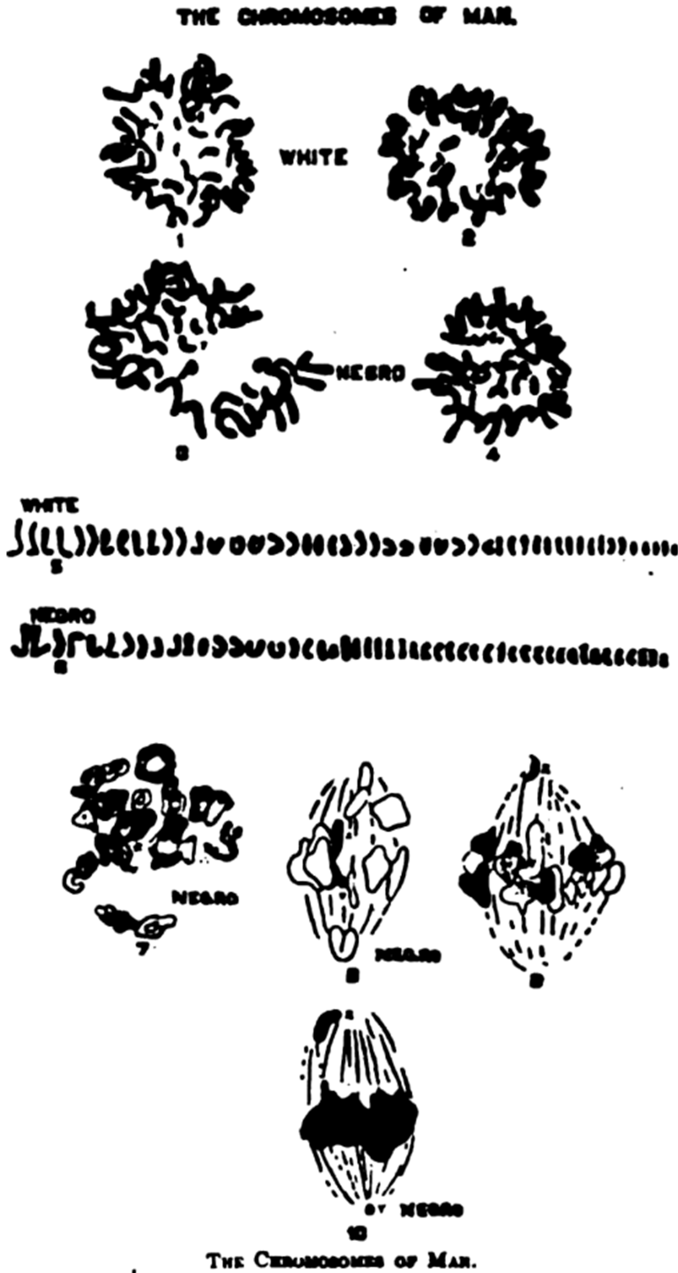

FIGURE 1.
The chromosomes of man from the Municipal Court's Sixteenth, Seventeenth, and Eighteenth Annual Report.

This illustration suggests that the concept "mixed stock" that appears so frequently in the reports from the Court was a pseudoscientific manifestation of the one-drop rule, the idea that having any Black ancestors tainted blood and made a person not white (Jordan 2014).

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In *Eugenical Sterilization in the United States*, Harry Laughlin and Harry Olson lauded the work of eugenicist Lothrop Stoddard, who made the connection between eugenics and interracial intimacy explicit (Laughlin 1922, 323). In *The Rising Tide of Color against White World-Supremacy*, Stoddard warned of white race suicide, arguing that "in ethnic crossings, the negro strikingly displays his prepotency, for black blood, once entering a human stock, seems really never bred out again" (90). According to Stoddard, when individuals of different races had children, their offspring were "a walking chaos," incapable of contributing meaningfully to society because of hereditary degeneracy (165–66).

Psychopathic Laboratory leaders not only believed interracial relationships were a cause of inferior, mixed-stock children but also saw interracial attraction as a sign of an individual's moral and mental deficiency. At the time, one identified symptom of subnormal intelligence was hypersexuality. Those labeled as feeble-minded and dementia praecox were considered "sex delicts" who "show[ed] a fondness for carousing with the opposite sex."[74] And one clear indicator of hypersexuality was thought to be attraction to people of another race. Eugenicists believed, for example, that mentally deficient Black men had a propensity to be controlled by sexual desire for white women. In one of the Psychopathic Laboratory's long-winded patient histories, a white woman named Alice Smith, diagnosed as feeble-minded, is described as growing up near Black families (Laughlin 1922, 447–48). When her father grew violent, she and her siblings would "seek refuge among the negroes about the neighborhood." This scandalous childhood closeness led to her having sex with a Black man, a critical factor in her eventual diagnosis as feeble-minded that led to her indefinite commitment in a mental institution.

Because much of the Municipal Court's meticulous recordkeeping has been lost, there is no record of what happened to the specific individuals brought to the Psychopathic Laboratory, including those labeled by their interracial relationship. Most likely they were committed. Scattered among other annual reports, descriptions of the lab's disposition of mentally deficient individuals paint a picture of swift institutionalization. Anyone found "to be insane, or definitely disordered mentally," was sent to a "suitable place, public or private," typically the Cook County Psychopathic Hospital.[75] For those considered feeble-minded, the lab would send them to "the Lincoln State School and Colony."[76] Individuals singled out because of an interracial relationship would therefore be forced to spend some unspecified amount of time—perhaps the rest of their adult life—in a sex-segregated state institution.

IV. CONCLUSION

In 1940, a white woman in Chicago reflected on her decades-long marriage to a Black man, saying, "When you marry out of your race you live a double life. This is like

74. *Sixteenth, Seventeenth, and Eighteenth Annual Report 1921–24*, 149–51.

75. Municipal Court of Chicago, *Twenty-Third Annual Report 1928–29* (Chicago: Municipal Court of Chicago, n.d.).

76. *Twenty-Third Annual Report 1928–29*, 99.

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being a criminal. It is exactly the same ... I feel like an innocent criminal. Like some person arrested for something he has never done" (Roberts 1940, 39).

Although interracial marriage had been legal in Illinois since 1870, those involved in interracial relationships often faced criminal scrutiny. Some individual state actors with their hands on the levers of state power used their discretion to undermine the formal, legal recognition of interracial marriage by punishing it as immoral. Progressive-Era state actors had a panoply of new criminal statutes at their disposal to police community norms. These open-ended, ill-defined crimes created the power to shape the make-up of the lawful community of citizens by carving out particular people as inherently "unlawful."

The court's treatment of interracial couples is not easy to uncover from the pages of its *Annual Reports* or from newspapers articles lauding the Morals Court's work. This is because racism, although prevalent, was also taboo. Judge Cook's own behavior in sentencing Norval Wilburn provides a salient example of this paradox. Judge Cook, having sentenced Mr. Wilburn to prison for "fornicating" with his own wife, felt the need to write into the *Chicago Defender* to deny that his decision had anything to do with race. The use of facially neutral misdemeanors to police racial norms enabled such obfuscation. As this article has shown, discretion became a way for ostensibly race-neutral state law to operate with a racial logic similar to that at work in states with more overtly white supremacist statutes (Muhammad 2010, 110).

The labeling of interracial relations as criminal had real consequences. A charge of disorderly conduct or fornication, for example, could lead to jail time, fines, or probation. Given the Court's commitment to eugenics, a movement that saw interracial intimacy as an indication of "degeneracy," individuals in interracial relationships were also singled out for referrals to the Psychopathic Laboratory, where they could face potential life-long institutional commitment. There were many secondary consequences that flowed from the criminalization of a legal, interracial union. Some interracial couples were outright denied marriage licenses (Drake and Cayton 1945, 136). Many faced ostracism from friends and family and had to hide their marriages from employers for fear of being fired (140). It was challenging to find a place to live, because landlords often assumed interracial couples were not actually married (141). Although interracial marriage remained legal, because couples faced scrutiny and intrusion from state actors, the idea that interracial intimacy was "illegal" became embedded in the law.

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