THE LAW & THE AMERICAN CHILD, P. 122-183

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649333295

The Law & the American Child, p. 122-183 by Thomas Charles Carrigan

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

THOMAS CHARLES CARRIGAN

THE LAW & THE AMERICAN CHILD, P. 122-183

Trieste

THE LAW & THE AMERICAN CHILD

By

Thomas Charles Carrigan, Ph. D.

A DISSERTATION SUBMITTED TO THE FACULTY OF CLARK UNIVERSITY, WORCESTER, MASS., IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY, AND ACCEPTED ON THE RECOMMENDATION OF G. STANLEY HALL

Reprinted from the PEDAGOGICAL SEMINARY
June, 1911, Vol. XVIII, pp. 121-183

THE LAW AND THE AMERICAN CHILD[1]

By THOMAS CHARLES CARRIGAN, A. M., Clark University

CONTENTS

		PAGES
1.	Introduction	121
2.	Marriage	123
3.	Divorce	126
4.	Employment of pregnant mothers	130
5.	En Ventre Sa Mere	131
6.	Abortion	132
7.	Birth	134
8.	Midwives	135
9.	Infanticide	135
10.	Prevention of blindness	136
11.	Vital statistics	136
12.	Legitimacy and illegitimacy	137
13.	Milk laws	139
14.	Compulsory school attendance laws	141
15.	Truancy	143
16.	Medical inspection of schools	145
17.	Laws for child protection	150
	(i) Societies for prevention of cruelty to children	150
	(ii) Offenses against children forbidden *under penalty*	152
18.	Juvenile court laws	161
19.	Child labor laws	165
20.	Rights of the child	168
21.	Rights of parents	171
22.	Majority	172
23.	Summary	173
24.	Suggestions	175
	Bibliography	181

(1) INTRODUCTION

Beneath the Children's Institute at Clark University, there is a statue of the late George Frisbie Hoar—a former Trustee

[1]The writer is indebted for assistance to President G. Stanley Hall, Dr. William H. Burnham, Dr. Theodate L. Smith and Librarian Louis N. Wilson, of Clark University, also to Thomas J. Homer, Esq., of Boston, Rev. John J. McCoy, LL. D., of Worcester, Dr. George E. Wire, of the Worcester County Law Library, and Librarian Robert K. Shaw, of the Worcester Free Public Library.

of the University, a United States Senator and a Jurist. To some interested in Child Welfare this statue symbolizes that courage, hope and humanity which characterized the Senator's life and which were manifested in his prevention of the deportation of the Syrian children in 1901, and in 1903 led the second session of the Fifty-seventh Congress to enact Sec. 37 of Chap. 1012 of the United States Statutes, which provides "Whenever an alien shall have taken up permanent residence in this country and shall have filed his preliminary declaration to be a citizen and thereafter shall send for his wife or minor children to join him, if said wife or either of said children shall be found to be affected with any contagious disorder, and it seems that said disorder was contracted on board the ship in which they came, such wife or children shall be held under such regulations as the Secretary of the Treasury shall prescribe until it shall be determined whether they can be permitted to land without danger to other persons; and they shall not be deported until such facts have been ascertained." (19, 2, 298.)

Near the northern terminus of the same street on which the University is located, stands the Worcester County Court House. Within a few steps beyond the entrance, the visitor comes to an arch on which is emblazoned: "Here Speaketh the Conscience of the State Restraining the Individual Will."

On Thursday, January 26, 1911, in an address to the young men and women of the Worcester Evening High School another who measures up to the best traditions of the Massachusetts Supreme Court Bench, Mr. Justice Rugg, said: "I believe those words of Senator Hoar at our Court House make the best definition of law extant." Law, then, in the United States at the beginning of this second decade of the twentieth century, may be assumed to be that legislative and judicial expression of the public conscience by which the individual is governed. And as our people are the State, it would seem to follow that our laws are never better nor worse than the American people demand.

The term "child" in this study is synonymous with the legal term "infant" and is intended to include all the years of minority.

The following pages contain a brief survey of some laws that concern the American child. It is not the purpose of this paper to follow out any of these laws in detail, to do so would require a separate volume for each of several of the laws outlined. The recency of the laws mentioned in this study is noted under the topics through references to the bibliography. Statutes, later than those cited by some of the authorities enumerated in the bibliography, have been inserted. Ob-

viously no claim can be made that the latest revisions have been presented—the legislatures of most of the states are now in session and new laws are being enacted daily.

(2) Marriage

Just as infancy is the legal status of persons under age, marriage is the legal status of husbands and wives. After a valid marriage man and woman are husband and wife, and their offspring are legitimate children.

Professor Stimson in his "Popular Law Making" says "It is always to be remembered that the law of marriage, and divorce as well, was originally administered by the Church. Marriage was a *sacrament;* it brought about a status; it was not a mere secular contract, as is growing to be more and more the modern view. Indeed, the whole matter of sexual relations was left to the Church, and was consequently matter of sin and virtue, not of crime and innocence. Modern legislation has, perhaps, too far departed from this distinction. Unquestionably, many matters of which the State now takes jurisdiction were better left to conscience and to the Church, so long as they offend no third party nor the public." (39, 324-5.)

Capacity of Parties in General. A person may be generally incapable of contracting marriage because of (a) want of age; (b) want of mental capacity; (c) want of physical and sexual capacity; (d) relationship by blood or marriage with the other party; (e) being of a different race from the other party; and (f) having been married before and that marriage not being at an end.

(a) Want of age. At common law the marriage of a male over fourteen and a female over twelve was valid. At least "thirty states, including the District of Columbia have by statute prescribed a higher age limit for marriageable consent, and in those states the marriage of a minor below the common law age of consent and the statutory age of consent is voidable by the minor on arriving at the statutory age of consent.

"In Minnesota and Wisconsin the statutory age of consent is fixed at 18 for the male and 15 for the female, but the statute does not declare that marriages under such ages, shall be void, therefore the courts have held them to be voidable, only. In the remaining 17 states the ages of consent remain the same as at common law. Three of these states, Kentucky, Louisiana and Virginia, having adopted said ages by statute" (1,1136).

The lowest statutory age for a male is fourteen. The states in which marriage can be contracted by a male at fourteen years are Kentucky, Louisiana, and Virginia. The

states in which the statutory limit is fifteen years are Kansas and Missouri. Those in which it is sixteen years are the District of Columbia, Iowa, North Carolina, Texas and Utah. Those in which it is seventeen years are Alabama, Arkansas, and Georgia; those in which it is eighteen years are Arizona, California, Delaware, Idaho, Illinois, Indiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, West Virginia, Wisconsin and Wyoming; and twenty-one in most of the remaining states.

Age limit for females. The lowest age at which a valid marriage can be contracted by a female is twelve years. The states in which the statutory limit of twelve obtains are Kansas, Kentucky, Louisiana, Missouri and Virginia. In the following states it is fourteen years: Alabama, Arkansas, District of Columbia, Georgia, Iowa, North Carolina, Texas and Utah. The states in which the statutory limit is fifteen are Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota and Wisconsin.

The states in which the statutory limit is sixteen years are Arizona, Delaware, Illinois, Indiana, Michigan, Montana, Nebraska, Nevada, New Hampshire, Ohio, West Virginia and Wyoming. The statutory limit is eighteen years in Idaho, Massachusetts, and New York. In other states for which no minimum marriageable age is given the provisions of the common law seem to apply.

The age below which parental consent is required for the marriage of a male is twenty-one years in forty states and territories in three states it is 18, and in one state 16. In Tennessee it is sixteen years, and in Idaho and North Carolina eighteen years.

In Georgia, Michigan and South Carolina no age is fixed for parental consent for the male. The age below which parental consent is required for the marriage of a female is fixed at 21 in 9 states, at 18 in 34 states (including D. C.), and at 16 in 3 states. (1.1137.) It is sixteen in Maryland and Tennessee. It is twenty-one years in Connecticut, Florida, Kentucky, Louisiana, Pennsylvania, Rhode Island, Virginia, West Virginia, and Wyoming. No statutory limit is established in New Hampshire, New York, and South Carolina. In all the other states and territories it is eighteen years. In Massachusetts, permission from the Probate Court is required for the marriage of a male under eighteen or of a female under sixteen.

(b) *Mental Capacity.* The marriage of the insane, persons absolutely *non compos*, was always void both at Common law and the Church law as well. By recent laws Connecticut and Minnesota prohibit the marriage of an epileptic, imbecile,

or feeble-minded woman under 45 years of age or cohabitation by any male of this description with a woman under 45 years of age, and marriage of lunatics is void in the District of Columbia, Kentucky, Maine, Massachusetts, Nebraska.

(c) *Physical and Sexual Capacity.* Marriage of impotent persons has always been void; Michigan prohibits the marriage of persons having sexual diseases; by recent laws Indiana and California refuse marriage licenses to persons under the influence of intoxicants or drugs or infected with certain transmissible diseases; and "finally most startling of all the proposal looms in the future to make every man contemplating a marriage submit himself to an examination, both moral and physical, by the state or city officials as to his health and habits, and even that of his ancestry, as bearing upon posterity." (39.327-8.)

(d) *Consanguinity and Affinity.* Marriage between first cousins is forbidden in Alaska, Arizona, Illinois, Indiana, Kansas, Missouri, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington and Wyoming, and in some of them is declared incestuous and void, and marriage with step-relatives is forbidden in all states except Florida, Hawaiian Islands, Iowa, Kentucky, Minnesota, New York, Tennessee and Wisconsin. In Hawaii, Porto Rico and the Philippines marriages are prohibited within the fourth degree of consanguinity.

(e) *Miscegenation.* Marriages between whites and persons of negro descent are prohibited and punishable in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia and West Virginia. Marriages between whites and Indians are void in Arizona, North Carolina, Oregon, and South Carolina; between whites and mongolians in Arizona, California, Mississippi, Oregon and Utah.

(f) If one has been married before and that marriage is not at an end, he of course cannot contract another marriage. If he goes through the form of a second marriage under such circumstances, he is guilty of bigamy, which is an offense punishable in all states. In nearly all states and territories the statutes provide that a person may contract marriage after the disappearance of a former husband or wife (the former marriage not having been dissolved by divorce or annulled) if the latter has been continuously absent for a specified number of years and has not been known to be living during this period. The length of time which the absence without news has continued is three years in Florida, Iowa, and New Hamp-

shire. It is two years in Pennsylvania. It is seven years in Maine, Maryland, Massachusetts, Mississippi, Missouri, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, Virginia, West Virginia and Wisconsin. It is five years in Alabama, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming.

Marriage Licenses. "Wisconsin seems to be the only state requiring the license to be taken out several days before the marriage. Only two states, Louisiana and Maine, appear to have any provision for the filing of objections, by parents, guardians or others, to a contemplated marriage. In Louisiana the license issues immediately upon the making of the application. In Maine notice of the intention to apply for a license must be made at least five days before the issuing of the license." (1.1138.) New Hampshire has just adopted this Maine plan. All the states and territories, except South Carolina, require marriage licenses, and also, except South Carolina require every marriage solemnized to be reported to some official specified by law. However, in Maine, Maryland, Iowa and Kansas a license is not required for the marriage of members of the Society of Friends, or Quakers. In Pennsylvania, Delaware, Maryland, Georgia and Ohio the parties, instead of securing a license, may have recourse to the publication of banns. There are also other minor exceptions in certain states.

3. Divorce

The American people are divided on matters pertaining to divorce. Those opposed to any divorce, that carries the legal right of remarriage during the life time of the divorced husband or wife, sometimes combine with those urging the fewest legal causes of divorce, and the coalition presents a united front against the exponents of "the open door" in divorce legislation. Some of the divorce reformers maintain that there are insidious influences planning to amend the marriage vows, so as to read "Till *divorce* doth us part;" that such a modification can be expected of an age that has legally evoluted or devoluted or devilized unto progressive fragmentary polygamy and polyandry on the installment plan. They tell us that divorce is a modern institution; that is divorce by the secular courts; that such "divorce as the Roman Church, recognized (without the right of remarriage) or was granted by the act of Parliament, was the only divorce existing down to the year 1642, when one Hannah Huish was