

BUCK v. BELL

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In an age of discrimination and racism, the Supreme Court interpreted the constitution in ways allowing the use of police powers to control the characteristics of the American population following eugenic theory, which was beyond the authority granted to the federal government. *Buck v. Bell* (1927) was a keystone case for the practice of eugenics in the United States. Eugenics was a theory in which a population tried to control its characteristics by determining who could reproduce and inject their own traits into that population. This dealt with whether the right to bodily integrity of the inmates of the State Colony for Epileptics and Feeble-Minded were protected in Virginia, especially the rights of Carrie Buck. The constitutional question was whether the law requiring the sterilization of such people deemed feeble-minded was in violation of the due process and equal protection clauses of the fourteenth amendment. Carrie Buck was deemed mentally incompetent because she had given birth to a child out of wedlock, as had her mother. It was determined by the state that Buck's daughter was also feeble-minded. The State of Virginia decided to sterilize Buck to prevent her from further procreating and perpetuating her defect. The case was decided in 1927, a high period for the eugenics movement in the United States. This movement tried to control the genetic makeup of society by writing laws governing procreation. The majority opinion in this case about eugenics was written by Justice Oliver Wendell Holmes, Jr., who was known for judicial restraint.¹

Carrie Buck was at a disadvantage from the very beginning of her case. She was in an institution run by Albert Priddy, one of the leaders behind the act that would eventually cause her sterilization. The other main leader behind the act was one of the authors of the state law, Aubrey Strode, who was the defense attorney for the case. The reason that the case is called *Buck v. Bell* rather than *Buck v.*

Priddy is that Priddy died, and Dr. John Bell became the superintendent of the Virginia State institution.² Dr. Bell was eventually the person responsible for sterilizing Carrie Buck.³ This was not the end of Buck's disadvantage, however. She was to be represented in court by Irving Whitehead, a close friend of Aubrey Strode. His lack of effort on her part is evident when one considers his actions. He neither called expert witnesses nor called character witnesses to testify on her behalf.⁴ Legal scholar Paul Lombardo said that Mr. Whitehead was in fact colluding with the "state's lawyer to guarantee that the sterilization law would remain in force."⁵ All of this, combined with a country that was very much in the mood to believe in eugenics, meant Carrie Buck was never likely to succeed, and so she did not.

Buck was also at a disadvantage because so many things were considered to be genetically inheritable at the time. According to Dr. Lynne Curry, "eugenicists' notion of 'inherited traits' was quite broad when compared with the twenty-first-century understanding of the term, encompassing virtually everything one acquired from one's parents, from social and economic standing to eye color and physical height."⁶ Strode, when addressing the Supreme Court, also noted in his statement why Carrie Buck could not offer her own insight. He said, "She cannot determine the matter for herself both because being not of full age her judgment is not to be accepted nor would it acquit the surgeon, and because she is further incapacitated by congenital mental defect."⁷ Justice Holmes, in his majority opinion, said "Experience has shown that heredity plays an important part in the transmission of insanity, imbecility, &c."⁸ According to eugenic thought, the social costs of these less than desirable traits could be erased.⁹ It should be noted that Carrie Buck's mental incapacity is in fact doubtful. As Curry said, "Although Carrie Buck herself was described as being capable of working constructively under supervision, a social worker asserted that the fact of her illegitimate pregnancy was strong evidence of Buck's feeble-mindedness since 'a

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¹ Michael Benedict, *The Blessings of Liberty: A Concise History of the Constitution of the United States*. (Lexington, Massachusetts: Ohio State University, 1996).

² Lynne Curry. *The Human Body on Trial* (Santa Barbara, California: ABC-CLIO, 2002), 58-60.

³ Paul Lombardo, "Facing Carrie Buck," *The Hastings Center Report* (March-April 2003): 14.

⁴ Curry, *The Human Body on Trial*, 60.

⁵ Lombardo, "Facing Carrie Buck," 1.

⁶ Curry, *The Human Body on Trial*, 35.

⁷ *Buck v. Bell*, 274 U.S. 200 (1927).

⁸ *Ibid.*

⁹ Lombardo, "Facing Carrie Buck," 1.

feeble-minded girl is much more likely to go wrong.”¹⁰ Today, this would hardly be grounds to determine someone as feeble-minded.

To understand why there was only a single dissenting justice and why he did not write an opinion, it is necessary to understand the mood of lawmakers at the time of this decision. Following eugenic theory, many supported limiting immigrants who entered the country.¹¹ As stated by Curry, this was because:

In their view, the massive influx of eastern and southern European immigrants bearing criminal and imbecilic tendencies, the substantial proportion of the native-born population that was non-white (and thus self-evidently genetically contaminated), and the propensity of degenerates of various stripes to multiply at higher rates than their more desirable fellow citizens had all come together to create a national epidemic more insidious and more threatening to the public’s well-being than any contagious disease.¹²

Many ideas were proposed to prevent further contamination of American blood, and several were put into place. Many of them were not even directed at immigrants but were still based on race. According to Paul Lombardo in *The American Breed: Nazi Eugenics and the Origins of the Pioneer Fund*, “eugenicists advocated the elimination of ‘suspect biology’ using the legal methods of court-ordered eugenical sterilization, criminalization of interracial marriage and prohibitions on immigration of groups with ‘inferior genetic potentiality.’”¹³

White men of Anglo-Saxon descent were in power politically at that time in history. These men held themselves to be the “normative standard by which all humans were to be judged.”¹⁴ It should be noted that “Virginia successfully passed both its compulsory sterilization law and the Racial Integrity Act in the same year the immigration quotas became national policy.”¹⁵ These all seem to be directed at maintaining white supremacy. The next logical step was for those in power to make sure that the white race remained in power and a strong race. This can be done by eliminating the threat of those people with either real defects or with undesirable characteristics. For example, undesirable characteristics could include either immorality, as perceived by those in power at the time, or mixed-race ancestry. The

whites in power wanted to purify their race. This sounds like the policy adopted by the Nazis prior to World War II

For those politicians who were intent on purifying the white race, the final subject to deal with was the control of characteristics within that race. They saw what they were doing as beneficial to society. The white majority was, after all, the most important part of society to lawmakers. Justice Holmes understood how legislated eugenics was supposed to benefit society and included it in his opinion. He said that “it is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.”¹⁶ He, in effect, said that it was necessary to protect society from itself, which is the perfect statement of the principle of police powers, or the power to control aspects of a society for the betterment of that society.

A good statement of the police powers can be found in a later case, *Skinner v. Oklahoma* (1942). In *Skinner*, Chief Justice Stone said that “a state may, after appropriate inquiry, constitutionally interfere with the personal liberty of the individual to prevent the transmission by inheritance of his socially injurious tendencies.”¹⁷ Curry said that eugenicists believed that the genetic deterioration of the United States’ population justified the use of the police powers as a way to infringe on personal liberties.¹⁸ Strode used this argument when he argued *Buck*. As his example, he explained how school children were vaccinated against their will for the good of society as a whole and equated the compulsory vaccination to the compulsory sterilization in question in *Buck*.¹⁹

The imperfection of law was not ignored. Holmes said that “the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow.”²⁰ This means that the laws in question should specifically state what type of person is being targeted. However, the laws are not entirely foolproof and thus rely on human intuition to apply them accurately. Before proceeding, it should be noted that *Skinner v. Oklahoma* (1942) was the court decision that limited the application of *Buck v. Bell* without overturning it. The justices in *Skinner* interpreted the laws more narrowly when they said that “strict scrutiny of the classification which a state makes in a sterilization law is essential lest unwittingly,

¹⁰ Curry, *The Human Body on Trial*, 59.

¹¹ Benedict, *The Blessings of Liberty*, 255.

¹² Curry, *The Human Body on Trial*, 58.

¹³ Paul Lombardo, “The American Breed: Nazi Eugenics and the Origins of the Pioneer Fund” *Albany Law Review* (Spring 2002): 743.

¹⁴ Curry, *The Human Body on Trial*, 35.

¹⁵ Gregory M. Dorr, “Principled Expediency: Eugenics, Naim v. Naim, and the Supreme Court.” *The American Journal of Legal History* 42, no. 6 (April 1998): 119-159.

¹⁶ *Buck v. Bell*, 274 U.S. 200 (1927).

¹⁷ *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

¹⁸ Curry, *The Human Body on Trial*, 37.

¹⁹ *Buck v. Bell*, 274 U.S. 200 (1927).

²⁰ *Ibid*.

or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws.”²¹ Thus, only fifteen years later, it was asserted by Justice Douglas that the law can do more than just indicate a policy; it can also protect people from violations of their rights by that policy.

But what rights are being violated? Those involved were fully aware as they argued against Buck’s rights. Strode knew what constitutional questions would be raised and argued against them well. He focused largely on the eighth amendment’s protections.²² Strode said that “In *State v. Felin*... it was expressly held that an asexualization operation... was not a cruel punishment.” He also argued that the protection against cruel and unusual punishment was intended to protect against torture. Another of Strode’s arguments was that it was decided in “Weem’s Case that the provision of the federal Constitution (Amendment VIII) does not apply to the state legislatures.” The initial act that brought all of this about was an act of the Virginia state legislature. Justice Holmes also helped to point out rights that people believed were being violated by these compulsory sterilization laws. He believed that due process of law was present and said so in these words:

There can be no doubt that so far as procedure is concerned the rights of the patient are most carefully considered, and as every step in this case was taken in scrupulous compliance with the statute and after months of observation, there is no doubt that in that respect the plaintiff in error has had due process of the law.²³

Strode also argued that restrictions on those who were deemed unsuitable to reproduce had already been protected in *Gould v. Gould* when it was sustained that a statute could prohibit the marriage of epileptics.²⁴

Whitehead argued for her rights without using previous precedent to a great a degree. In fact, a good example of his arguments for her rights was when he said that “the inherent right of mankind to go through life without mutilation of organs of generation needs no constitutional declaration.”²⁵ While this fit with the eighteenth century federalists’ view that the Constitution need not enumerate all of the American citizens’ rights, it hardly helps support his argument very strongly. Precedent appeared to be the strongest form of support for such arguments, and he did not offer precedent

well. He did offer the precedent of the case *Munn v. Illinois* (1876).²⁶ He used this to show how the court defined deprivation of life. The court said that it protected against the “deprivation not only of life but whatever God has given to everyone with life.”²⁷ According to Whitehead, “the inhibition [of the government] against its deprivation extends to all those limbs and faculties by which life is enjoyed. The deprivation not only of life but whatever God has given to everyone with life...is protected by the provision in question.

While Mr. Whitehead used the statement from *Munn v. Illinois* out of context, it is still a relevant statement in this situation. God gave most people the ability to reproduce; the government does not have the right to take that away. The ruling of the court did not find Whitehead’s case to be strong enough.

It is very tempting to compare and contrast *Buck* with *Skinner* in depth. However, this shall be done briefly because it is important to understand how much changed from 1927 to 1942. The people targeted by the eugenics movement were obtaining rights that they had previously been denied in *Buck v. Bell*. Justice Jackson wrote in his concurring opinion in *Skinner* that “there are limits to the extent to which a legislatively represented majority may conduct biological experiments at the expense of the dignity and personality and natural powers of a minority – even those who have been guilty of what the majority define as crimes.”²⁸ This represents a change in the thinking of Americans. The white majority was no longer the “normative standard” by which people were to be judged. The Supreme Court recognized in *Skinner* both the rights of minorities and that there were limits to the police power when used to accomplish eugenic goals. It did not overturn *Buck v. Bell*, though Justice Douglas acknowledged that “[an] Act cannot be sustained as an exercise of the police power, in view of the state of scientific authorities respecting inheritability of criminal traits.” They merely observed those points mentioned without “intimating an opinion on them.”²⁹

The differing opinions of the two courts within such a short time period shows just how unclear the constitutional issues around the police powers and the fourteenth amendment were. Taking each decision in context can also show how great an influence the opinion of the public can have on the Supreme Court as well, even though the justices are supposed to be buffered against public opinion by not

²¹ *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

²² “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

²³ *Buck v. Bell*, 274 U.S. 200 (1927).

²⁴ *Ibid*.

²⁵ *Buck v. Bell*, 274 U.S. 200 (1927).

²⁶ The case of *Munn v. Illinois* was not concerning bodily integrity. It concerned the abilities of states to regulate certain businesses, such as railroads, within their borders.

²⁷ *Buck v. Bell*, 274 U.S. 200 (1927).

²⁸ *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

²⁹ *Ibid*.

being popularly elected and being appointed for life. In the 1920s the people deemed unfit to procreate were expected to acquiesce in order to benefit the larger society. As stated by Justice Holmes:

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the state for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence.³⁰

Justice Holmes' scorn for these people who "sap the strength of the state" is very evident. His statement is a very clear and concise statement of eugenic thought. Justice Holmes' prejudice was evident when he said "so far as the operations enable those who otherwise must be kept confined to be returned to the world, and thus open the asylum to others, the equality aimed at will be more nearly reached."³¹ What he implies is that the people being kept in these asylums were not being kept there because they were in need of help or were a threat to society directly, but were being kept in the asylums because they were a threat to society only if they were allowed to procreate and reproduce "their kind." They were not deemed a threat worth keeping out of society for any other reason than the transmission of their genes and the muddying of the American gene pool.

When the Supreme Court showed its approval of eugenic theory by the Virginia law requiring compulsory sterilization, it helped lead a great change, not only in our country, but in the world. According to Paul Lombardo, *Buck* "paved the way for more than 60,000 operations in more than thirty American states with similar laws and provided a precedent for 400,000 sterilizations that would occur in Nazi Germany."³² It was not until *Skinner v. Oklahoma* (1942) that the Supreme Court began to think along what most Americans today would call "saner" lines. More restrictions on such rampant uses of the police power were put into place but not before the harm was done and thousands of people had been sterilized for the purpose of maintaining the quality of the American bloodline. That the fourteenth amendment was considered not to apply yet again in this case was no great surprise when considering the constitutional conservatism practiced by the Supreme Court at that time. This was one example of where a broader interpretation of the amendment would have made a huge difference in many lives. Much suffering could have been spared for many people if the Court had interpreted the amendment and laws regarding the police powers differently.

Though the case of *Skinner v. Oklahoma* (1942) made it more difficult to pass eugenic laws, it was decided in a time when racism was still a strong part of American culture. It should be noted that other precedents support mandatory vaccination and laws promoting the general health and welfare of the citizens of the United States, so *Buck* is not needed for this purpose. *Buck* is still a means of control over the population that is not needed in the twenty-first century. Today, the concerns that fueled the case of *Buck v. Bell*, such as the genetic inheritability of certain characteristics and the befouling of the American bloodline, are no longer worries due to a better understanding of how traits are truly inherited as well as *what* can be inherited from parents. *Buck v. Bell* does not serve a protective purpose today and could only serve the purpose of the subjugation and oppression of a minority group again in the future. However, it has never been overturned. Justice Holmes said that "three generations of imbeciles are enough" when referring to the Bucks, but the question is, was it ever really his place to decide whether it was enough or not?³³

³⁰Buck v. Bell, 274 U.S. 200 (1927).

³¹Ibid.

³²Lombardo, "Facing Carrie Buck," 4.

³³Buck v. Bell, 274 U.S. 200 (1927).