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"Buck v. Bell: The Supreme Court Upholds Forced Sterilization"

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In a tragic, landmark ruling of historic dimensions, the Supreme Court, in 1927, in an opinion written by Justice Oliver Wendell Holmes, upheld the forced sterilization of a Virginia woman erroneously characterized by the state as "feeble minded," grounded on the chilling rationale that, "three generations of imbeciles are enough."

The Court's 8-1 decision in Buck v. Bell, with only Justice Pierce Butler dissenting, is widely regarded as one of its worst. Justice Holmes's opinion, just five paragraphs in length, and fewer than 1,000 words, callously dispatched the dreams of those hoping to create a family, by laying a legal foundation for some three dozen states to forcibly sterilize more than 70,000 Americans in the 20<sup>th</sup> century. Victims included those like Carrie Buck, who were deemed "mentally deficient," those described as "promiscuous" women and, most prominently, women of color.

America's alarming embrace of eugenics—the "science" of eliminating undesirable traits in the gene pool—in the first decades of the 20<sup>th</sup> century spawned state laws that authorized the involuntary sterilization of those who might reproduce and transmit mental illness and other traits that should be cleansed from humanity.

Carrie Buck was raped and impregnated by a relative in 1924, when she was 18 years old. Her foster

family, fearing disclosure and humiliation, committed her to Virginia's Colony for Epileptics and Feeble-Minded, on the premise that her intellectual age was only nine years old. The colony enthusiastically practiced sterilization as a means of promoting a better race by preventing procreation among those with "undesirable" traits.

Carrie was considered a good candidate for compulsory sterilization because her mother, Emma, who was alleged to have a mental age of less than eight years, was housed at the colony. When Carrie delivered a daughter, Vivian, the superintendent of the colony declared that she had the "look" of an "imbecile." The superintendent recommended sterilization for Carrie on grounds that she was feebleminded and a "moral delinquent."

The superintendent's recommendation was sustained at a sham hearing. Carrie had legal representation, but in name only since her attorney was a former member of the colony's board and a close friend of the colony's attorney. Her "attorney" called no witnesses to defend Carrie or the charges by the state that her family was part of the "shiftless, ignorant and worthless class of anti-social whites" in the South. Vivian was described as "not quite normal." Carrie's legal counsel could have argued that her academic record was "average," which it was, and that she faithfully attended church, but he did not, because he intended to fail, hoping to obtain a ruling upholding the Virginia law.

Before the Supreme Court, Virginia defended forced sterilization on its broad police power, its authority to protect the public and, in this instance, Carrie Buck. Carrie's attorney now argued that the state did not have the authority to surgically deprive persons of "their bodily integrity." If permitted to do so, he warned, "the worst form of tyranny, the reign of

doctors" would decide which classes of people to drop from society.

The Supreme Court was indifferent to the claim that Carrie Buck had been deprived of her 14<sup>th</sup> Amendment right to due process and equal protection. At this juncture in American history, legal "rights," beyond protection for property, took a backseat to assertions of a state's police power. In many cases, the mere invocation of the police power was sufficient to trump the claim of "rights." Justice Holmes, a long-time advocate of judicial deference to state legislation, Social Darwinism, and, with Chief Justice William Howard Taft, sympathetic to eugenics. He was happy to end the Buck's family line, writing "three generations of imbeciles are enough."

Holmes wrote that if a nation might call on its "best citizens" for their lives during war, it could demand a "lesser sacrifice" of those who "sap the strength of society." He added: "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." For Holmes, some lives were more valuable than others.

Justice Holmes and the majority seemed not to care that Carrie was not mentally disabled. Vivian was an honor roll student before a bout with the measles took her life. Holmes wrote his English friend, Harold Laski, that he derived satisfaction from writing the opinion. "Establishing the constitutionality of law permitting the sterilization of imbeciles," he observed, "gave me great pleasure." Holmes, according to one of his biographers, feared for the future of the white race, believing it would be overtaken by brown and yellow races. Only brutal methods, including resort to euthanasia for the unfit, could insure survival and improvement of the white race.

In 1980, Carrie Buck was found alive and living with her sister, Doris, who had also been forcibly sterilized. Carrie was tested and determined to be a woman of normal intelligence.

The Supreme Court has not overruled Buck v. Bell, or rebuked Justice Holmes's opinion. In 1942, however, the Court in Skinner v. Oklahoma implicitly overturned Buck v. Bell by recognizing a fundamental right to procreate. America had lost its appetite for eugenics after witnessing the horrors in Nazi Germany.