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A Depth Study of Buck v. Bell, 274. U.S. 200

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“Three Generations of Imbeciles is Enough” - Justice Holmes

A Depth Study of Buck v. Bell, 274. U.S. 200

Professor Svenson

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By Sierra Powell
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I. Introduction and Facts of the Case

Carrie Buck, a resident of Virginia, lived with a family as an adopted child and attended school for five years. Carrie Buck's Mother, Emma Buck, had a mental age of seven and was residing in the Virginia State Colony for Epileptics and Feeble-Minded (hereinafter SCEFM). At the time of Carrie's commitment her father was dead. At age 17 Carrie Buck, having a mental age of nine and an illegitimate child, was committed to the same institute as her mother on January 23, 1924. After Carrie was committed her child was tested and deemed to have evidence of mentally defective qualities. Also in 1924 the Commonwealth of Virginia attempted to use eugenics to promote the general welfare of its society. It desired to remove "mental defectives" in Virginia by sexual sterilizing those adjudged to be feeble-minded under Virginia law. In its General Assembly Virginia passed the Virginia Sterilization Act. It read in part:

"Whereas the Commonwealth has in custodial care and in supporting in various State institutions many defective persons who if now discharged or paroled would likely become the propagation of their kind a menace to society, but who if incapable of procreating might properly and safely be discharged or paroled and become self-supporting with benefit both to themselves and society"

"Whereas human experience has demonstrated that heredity plays an important part in the transmission of insanity, idiocy, imbecility, epilepsy, and crime"

"Be it enacted by the General Assembly of Virginia, That whenever the Superintendent of the Western State Hospital, or of the Eastern State Hospital, or of the Southwestern State Hospital, or of the Central State Hospital, or of the State Colony for Epileptics and Feeble-Minded, shall be of the opinion that it is for the best interests of the patients and of society that any inmate of the institution under his care should be sexually sterilized, such superintendent is hereby authorized to perform, or cause to be performed by some capable physician or surgeon, the operation of sterilization on any such patient confined in such institution afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy; provided that such superintendent shall have first complied with the requirements of this act"

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“Such Superintendent shall first present to the special board of directors of his hospital or colony a petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by said board requiring him to perform or have performed by some competent physician to be designated by him in his said petition or by said board in its order, upon the inmate of his institution named in such petition, the operation of vasectomy if upon a male and of salpingectomy if upon a female.”

The Superintendent of the SCEFM, Dr. Albert S. Priddy, believed Carrie Buck to be feeble-minded. And, as required by law for sexual sterilization of inmates, he filed a petition to the Board of Directors of the SCEFM for the sterilization of Carrie Buck. The petition was granted by the Board on September 10th, 1924 and the performance of a salpingectomy on Carrie Buck was so ordered. The Virginia Sterilization Act also had a provision stipulating that the decision of the special board could be appealed by either party to the Circuit Court of jurisdiction. Action was brought against Dr. Priddy by R.G. Shelton. Mr. Shelton was, at the time, named guardian and next friend of Carrie Buck. On October 3, 1924 Carrie Buck appealed the decision of the Board of the SCEFM to the Circuit Court of Amherst County. However, before the litigation was heard in the Circuit Court Dr. Priddy died and Dr. James Hendren Bell, the new Superintendent of the SCEFM, was substituted for Dr. Priddy as the defendant in the case. In a depth study of Buck v. Bell I first will trace the case through the Amherst County Circuit Court and the Supreme Court of Virginia. Then I will offer an explanation of the United States Supreme Court Decision. Lastly I will discuss the legal, social, and political implications of Buck v. Bell.

II. Buck v. Bell in Amherst County Circuit Court

In trial on November 18th, 1924 Buck appealed the decision of the SCEFM Board. She requested that the Circuit Court find that she was not feeble-minded within the meaning of the Virginia statute and that the order for her salpingectomy be rendered void. Additionally, she

2 Virginia Acts 1924, Chap. 394, p. 539
Sierra Powell claimed that the Virginia Sterilization Act violated the due process guarantees of the Virginia Constitution and the Fourteenth Amendment to the United States Constitution.

The evidence taken in the Circuit Court trial established facts of the case in addition to those determined by the SCEFM Board regarding Buck’s commitment to the Colony, her sterilization petition, and the proceedings of the SCEFM Board. First, the evidence from the trial defined the types of feeble-mindedness and how feeble-mindedness is seen in Virginia’s society. The Circuit Court evidence shows that there are grades of feeble-mindedness with mental ages ranging from four years to fifteen years. Also, at the time, there were eight to ten thousand feeble-minded people residing in Virginia and approximately around seventy-five to one hundred thousand of those deemed feeble-minded committed in State institutions. According to Virginia law, all of those found to be feeble-minded should be sexually sterilized. The effect of segregating the “morons” of society was said to be that the people are then prevented from propagating.

Secondly, the evidence outlined exactly what a salpingectomy and vasectomy entail as medical procedures. A “salpingectomy is a surgical operation involving the opening of the abdominal cavity of a female on both sides and the cutting and tying back of the severed ends of the fallopian tubes; vasectomy is the operation for males and consists of cutting and tying the severed ends of the tube running up from the testicles; both operations are reasonably safe in the hands of a skilled surgeon.” A successful operation was determined to have no negative effects on the general health of the patient, nor was it found to cause a decline in sexual desire or gratification to decline.

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4 Whitehead, “Brief for Plaintiff in Error” p495-496.
Thirdly, the Circuit Court of Amherst County heard the testimony of four witnesses in Buck v. Bell; Dr. H.H. Laughlin, Dr. J.S. DeJarnette, Dr. A.H. Estabrook, and Dr. A.S. Priddy. Dr. H.H. Laughlin’s credentials were as follows: resident of Long Island, New York, Assistant Director of the Eugenics Record Office of the Carnegie Institution of Washington, Expert Eugenical Agent for the Committee on Immigration and Naturalization of the House of Representatives and Eugenics Associate of the Psychopathic Laboratory of the Municipal Court of Chicago, and author of a volume on eugenic sterilization in the United States. Dr. Laughlin testified in favor of the Virginia Sterilization Act. He said “all this is a typical picture of a low grade moron…the family history record and the individual case histories, if true, demonstrate the hereditary nature of the feeble-mindedness and moral delinquency described in Carrie Buck.” He further testified that “in the archives of the Eugenics Record Office there are many hundreds of manuscript pedigrees of families with feeble-minded members. These pedigrees prove conclusively that both feeble-mindedness and other intelligence levels are, in most cases, accounted for by hereditary qualities…[And,] modern individual and family history study can, in practically all cases of social inadequacy locate the hereditary factor, if it exists.”

Dr. J.S. DeJarnette was the Superintendent of the largest of the Virginia State Hospitals for the insane. He testified that insanity can be inherited, that it is not curable, and that it can be judicially ascertained. He said “Now, you take a feeble-minded woman, if she has a child it is very apt to be—that one-fourth of them will be feeble-minded. If both parents are feeble-minded, it is practically certain that the children will all be feeble-minded.” He thought that Carrie Buck was very likely to produce socially inadequate offspring.

Dr. A.H. Estabrook was affiliated with the Carnegie Institution and had been working for fourteen years on an investigation formulating the laws of heredity. He had also personally investigated Carrie Buck's case, but his testimony spoke to feeble-mindedness in a broader sense. He explained that feeble-mindedness is a recessive rather than a dominant condition. If children of those with the recessive trait "mate into a bad stock, irrespective of whether the mate is feeble-minded or not, if he marries into bad stock one-fourth to one-half of the children will be feeble-minded." He testified that "the blood is bad. They carry the defective germ plasm, and where two defectives’ germ plasms meet, the effect again appears...in other words, it is a trait that is present in the germ plasm of the reproductive part of the individual that determines the offspring, and not in the individual. We look upon individuals now as merely off-shoots of the stock- the germ plasm is what goes through."\(^8\) Essentially, without physically or mentally representing the characteristics of the "defective germ plasm," one can still carry the trait and pass it on to their children.

As the Superintendent of the colony where Carrie Buck was committed, Dr. Priddy testified as to her situation specifically. He first clarified Virginia law as it applied to Carrie Buck. The law "is to keep her under custody during her period of child-bearing." She was committed to the institution at the age of eighteen. "She would have thirty years of strict custody and care, under which she would receive only her board and clothes; would be denied all of the blessings of outdoor life and liberty, and be a burden on the State of Virginia of about two hundred dollars a year." However, if sterilized "with the training she has got, she could go out, get a good home under supervision, earn good wages, and probably marry some man of her own level." Dr. Priddy's testimony intended to demonstrate the rationale behind the Virginia statute and better articulate why sterilization of the feeble-minded serves the welfare of both the feeble-

\(^8\) Strode, "Brief for the Defendant in Error" p 521-523.
minded person and society in general. He said “every human being craves liberty; [with sterilization] she would get that, under supervision...she would cease to be a charge on society if sterilized; it would remove one potential source of the incalculable number of descendants who would be feeble-minded. She would contribute to the raising of the general mental average and standard.” Furthermore, when asked how the patients feel about this procedure, Dr. Priddy responded that “they clamor for it...it means the enjoyment of life...Also, they have the opportunity of marrying men of their mental levels and making good wives.”

Upon considering the facts, evidence, and testimony of the case, the Circuit Court of Amherst County held that the Virginia Sterilization Act was constitutional. The decision of the SCEFM Board was affirmed. Carrie Buck was found to be feeble-minded as defined by the Commonwealth of Virginia, and it was determined to be a hereditary condition. She was duly proceeded against by Dr. Priddy before the Special Board in accordance with the requirements of the law. And, sexual sterilization was found to be a procedure that did not harm her general health. Therefore, according to the Circuit Court of Amherst County, she could be (like many other feeble-minded people) sexually sterilized by her mental institution.

III. Buck v. Bell in the Supreme Court of Virginia, 143 Va. 310

Carrie Buck appealed the decision of the Circuit Court of Amherst County to the Supreme Court of Virginia. The case was decided on November 12, 1925. It was a unanimous decision, and Justice J. West delivered the opinion of the Court. In her appeal Carrie Buck contended that the Virginia Sterilization Act did not provide due process of law, imposed a cruel and unusual punishment, and denied her and other inmates of the State Colony equal protection of the law. Therefore it was inconsistent with Virginia Constitution Article I §§ 9, 11 and United States Constitutional Amendment XIV.

9 Strode, “Brief for the Defendant in Error” p 523-528.
a. Due Process

In his opinion, Justice West first considered the alleged violation of due process. The question before the Court was whether or not the SECFM Board decision and the Circuit Court of Amherst County were “adjudication[s] by an impartial tribunal vested with lawful jurisdiction to hear and determine the questions involved, after reasonable notice to the parties interested and an opportunity for them to heard.”

He looked the opinion from *Commissioners v. Hampton Roads Oyster Co.* 109 Va. 565 as a parallel proceeding before a board. Judge Cardwell was quoted saying that “the proceedings in this case before that tribunal were in strict accordance with the requirements of the statute, and not only did appellee have reasonable notice thereof, but ever reasonable opportunity to be heard.”

*Commissioners v. Hampton Roads Oyster Co.* established a narrower question for Buck v. Bell in determining whether Carrie Buck was duly proceeded against. Were the proceedings of the SCEFM in “strict accordance” with the requirements of the Virginia Sterilization Act in order to meet the requirements of due process of law?

Furthermore, in defining the elements of due process, the language of two other cases was referenced by Justice West. The opinion of Justice Matthews in *Hurtado v. California* 110 U.S. 516 established that “any legal proceeding enforced by public authority, whether sanctioned by age or custom, or merely devised in the discretion of the legislative power, in the furtherance of the general public good, which regards and preserves those privileges of liberty and justice must be held to be due process of law.”

The last case cited regarding due process was *Twining v. New Jersey* 211 U.S. 78. In this case, Justice Moody wrote of due process that it “requires that the court which assumes to determine the rights of parties shall have jurisdiction and that there
shall be notice and opportunity for hearing given the parties. Subject to these two fundamental conditions, which seem to be universally prescribed in all systems of law, established by civilized countries, this court has up to this time sustained all State laws, statutory or judicially declared, regulating procedure, evidence and methods of trial, and held them to be consistent with due process of law.”

On the questions of due process the Supreme Court of Virginia in *Buck v. Bell* found that Carrie Buck was duly proceeded against in her commitment to the State Colony, in the judgment that found her to be feeble-minded, and in the ordering of her sexual sterilization. The Virginia Sterilization Act vested the Board of Directors of the institution, after notice according to law, with jurisdiction to hear any petition for the sexual sterilization of inmates thereof. Dr. Priddy had served a copy of the petition and a notice of the time and place it would be presented to Carrie Buck, R.G. Shelton, and Emma Buck. In his petition, Dr Priddy stated the facts of the case and provided an affidavit praying an order to be entered to perform the operation of a salpingectomy on Carrie Buck. Carrie Buck, R.G. Shelton, and counsel all attended the hearing. The Supreme Court of Virginia held that SCEFM Special Board had jurisdiction to decide whether or not to sexually sterilize Carrie Buck, that she was given notice and opportunity to be heard, and that the proceeding was in strict conformity with the Virginia statute. Therefore, the act met the requirements of due process.

b. Cruel and Unusual Punishment

In deciding whether or not the Virginia Sterilization Act imposed cruel and unusual punishment, the Supreme Court of Virginia found it did not for four different yet brief reasons. First, Justice West wrote that “the act is not a penal statute. The purpose of the legislative was not to punish but to protect the class of socially inadequate citizens…and to promote the welfare
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of society by mitigating race degeneracy and raising the average standard of intelligence of the people of the State.” Secondly on this matter Justice West explained that the sexual sterilization procedure was found to be completely safe. Thirdly, even if the statute was found to be of a penal nature, *State v. Feilen* 70 Wash 65 was a criminal case where the court held that a vasectomy did not constitute cruel punishment. Lastly, the cruel and unusual punishment prohibition in the Virginia Bill of Rights § 9 speaks to “such bodily punishments as involve torture and are inhumane and barbarous, and has no application to the case at bar.” Each of these four observations led the Court to decide that the sexual sterilization of Carrie Buck and others like her did not constitute cruel and unusual punishment.

c. Equal Protection of the Law

Finally the opinion of the Virginia Supreme Court considered the argument from the appellant that the Virginia Sterilization Act denied inmates of the SCEFM and other State mental institutions equal protection of the law. The opinion stipulated that the “State may, in proper cases, by due process of law, take into custody and deprive the insane, the feeble-minded and other defective citizens of the liberty which is otherwise guaranteed to them in the constitution.” The right for states to do this rests in their police power, and is not to be abridged by the Federal Government. “Where the police power conflicts with the Constitution, the latter is supreme, but the courts will not restrain the exercise of such power, except where the conflict is clear and plain.” Justice West quoted *Barbier v. Connolly* 113 U.S. 27 in explaining that no Constitutional Amendment was designed to undermine state police power; the Fourteenth Amendment in particular was not. The Police Power of the State enables it “to prescribe regulations to promote
the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its wealth and prosperity.\textsuperscript{14}

Next, the Virginia Supreme Court recognized that a variety of different statutes requiring the vaccination of school children have been upheld. The statutes, like the Virginia Sterilization Act, ordered a surgical operation for the welfare of the individual and of society. \textit{Jacobson v. Massachusetts} 197 U.S. 11 was referenced by Justice West saying that “the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety...the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good.”

The last part of the opinion of the Virginia Supreme Court sought to clarify the meaning of the Equal Protection Clause in the Fourteenth Amendment. Statutes may only legally classify a group of people if the classification is reasonable and non-arbitrary. And, the legislation must apply alike to similarly situated persons. Three cases were cited in the opinion to provide further specification on these points. First, according to \textit{Anthony v. Commonwealth} 142 Va. 577 “whether classification is reasonable is a question primarily for the legislature. It is presumed to be necessary and reasonable, and the courts will not substitute their judgment for that of the legislature unless it is clear that the legislature has not made the classification in good faith”\textsuperscript{15} Secondly, \textit{Hayes v. Missouri} 120 U.S. 68 reiterated that the Fourteenth Amendment “merely requires that all persons subjected to such legislation shall be treated alike, under like
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circumstances and conditions, both in the privileges conferred and in the liabilities imposed.” Thirdly, *Lindsley v. National Carbonic Gas Co.* 220 U.S. 61, detailed that “a classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality...if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.”

After considering the alleged violation of equal protection, the Supreme Court of Virginia found that there was not a violation. Justice West wrote of this that “the purpose of the act is to promote the welfare and prevent procreation by those who have been, or may hereafter be, judicially ascertained to be feeble-minded...the status of a feeble-minded person...shall have undergone expert observation for at least two months and been subjected to the Binet Simon measuring scale of intelligence.” The Virginia Sterilization Act does not apply to those only supposed to be feeble-minded. The act does not divide “a natural class of person into two and arbitrarily provides for different rules for the government of each.” The opinion explained that the distinction between those adjudged to be feeble-minded and those that have not was in place before the Virginia Sterilization Act was passed. Carrie Buck “was already deprived of the power of procreation by segregation...there can be no discrimination against the inmates of the Colony, since the woman on the outside, if in fact feeble-minded, can, by the process of commitment and afterwards a sterilization hearing be sterilized under the law.” The opinion also declared that they would not follow, as requested by the appellant, *Smith v. Board of Examiners of Feeble-Minded, Epileptics, etc.* 85 N.J. Law, 46. This decision was due to the fact that in
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Smith v. Board of Examiners, etc. the statute in question only sexually sterilized inmates of charitable institutions, and not non-charitable institutions. The classification in that case was found to be arbitrary in a way that the Virginia Supreme Court found did not apply to Buck v. Bell.

Ultimately, the Court affirmed the decision of the Circuit Court of Amherst County. It held that Carrie Buck was duly proceeded against. The proceedings were in strict accordance with what the statute required, she was given reasonable notice and opportunity to be heard, and the SCEFM and Circuit Court did have jurisdiction. Also, the sexual sterilization of the feeble-minded was found not to be a cruel and unusual punishment. The Virginia Sterilization Act was not a penal statute, sexual sterilization is not harmful to the health of the patient, and the cruel and unusual punishment portion of the Virginia Bill of Rights does not speak to orders like sexual sterilization. Lastly, the Court held that Carrie Buck was not denied equal protection of the laws. The Commonwealth of Virginia was exercising its legitimate police power, a clear and plain conflict with the Constitution was not found, and the classification in the statute was reasonable and applied alike to similarly situated people.

IV. Buck v. Bell in the Supreme Court of the United States

Buck v. Bell arrived to the Supreme Court of the United States on a writ of error to review the Virginia Supreme Court of Appeals in its judgment. Arguments in error were heard by the Supreme Court on April 22, 1927, and the case was decided May 2, 1927. This part will have three sections. I will outline the arguments for the plaintiff and then the defendant in error. Lastly I will provide an analysis of the opinion of the United States Supreme Court.
a. Arguments for the Plaintiff in Error

I.P. Whitehead, Attorney for the Plaintiff in Error, urged that the Supreme Court of Appeals of Virginia erred in its decision of *Buck v. Bell*. He contended that the Virginia Sterilization Act abridged the privileges and immunities of Carrie Buck and other persons like her at the SCEFM that are guaranteed by the Fourteenth Amendment to the United States Constitution. Specifically the Virginia Supreme Court erred in finding that the Virginia Sterilization Act did give Carrie Buck due process of the law and that it did not deny her and other inmates of SCEFM equal protection of the law. Whitehead described the question before the United States Supreme Court as whether the Virginia Sterilization Act “is a valid exercise of the police power of the State and therefore a valid enactment under the Constitution of the United States.”[^16] There was no argument made as to error of the evidence. In the “Brief for the Plaintiff in Error” Whitehead first discussed police power. Secondly he outlined eugenic laws and regulations both ancient and modern. The plaintiff in error provided two arguments to the Supreme Court. Whitehead argued for Carrie Buck that the Virginia Sterilization Act does not provide for due process of law not does it satisfy the constitutional guarantee of equal protection of the law. Lastly the brief sought to explain the danger of the legislation.

The “Brief for the Plaintiff in Error” recognized that police power is “a law of necessity...and that under this power a state may enact reasonable laws to promote the health, morals, and general public good.”[^17] Whitehead said of this power that it is “great and far-reaching.” Despite this, the plaintiff argued in error that, as an instance of police power, the Virginia Sterilization Act conflicted with the rights of the Federal Constitution. And, when such a conflict exists the police power must be surrendered while the United States Constitution

remains the supreme law of the land. In this case the plaintiff claimed that one of the rights guaranteed by the Constitution "is the inherent right to go through life with full bodily integrity, possessed of all those powers and faculties with which God has endowed them."^{18} It was argued that, in this instance, the right to bodily integrity is paramount to State police power.

In discussing eugenic law Whitehead began with an account of the historical background of eugenics. The brief quoted ancient Greek and Roman thought in uncovering the origin of eugenics. One renowned philosopher, Plato, demanded of an ideal Republic that those people found to be unsound should be dead. He said that those "diseased in their bodies, they should let die, but as for those who are thoroughly evil and incurable as to the soul, these they are themselves put to death."^{19} Also, Diodorus Sisculus, a Greek historian, recorded the eugenic laws of Ceylon. He was quoted by the plaintiff in error saying that "those that are lame or have any other weakness or infirmity are put to death."^{20} A few other Greeks and Romans were referenced, and they all served the same essential point; the notion of eugenics has historical origins lying in a very distant past. Counsel Whitehead argued that America’s modern eugenics laws are behind the times. He wrote "so in modern America the ‘science of medicine’ has taken up the ancient idea of selective breeding and laws have been enacted providing for surgical operations to prevent the reproduction of the so-called socially inadequate."^{21}

The context of modern American laws was provided through a review of a variety of different cases regarding eugenics and sterilization. Some of the cases were decided on the basis of the equal protection clause and others cited were regarding cruel and unusual punishment. There were three cases cited relevant to the equal protection clause. First, in Smith v. Board of

^{18} Whitehead, "Brief for Plaintiff in Error" p497-498.
^{19} Plato, Republic, Book 3 Chapter 17
^{20} Whitehead, "Brief for Plaintiff in Error" p498.
^{21} Whitehead, "Brief for Plaintiff in Error" p499.
Examiners a New Jersey law requiring the sterilization of society's defectives in mental institutions was found unconstitutional on the basis of the Fourteenth Amendment's guarantee of equal protection. *Haynes v. Lapeer* 201 Mich. 138 declared a similar Michigan law unconstitutional on equal protection grounds too. Moreover, a case that, at the time the brief was written, had not been officially reported yet was ruled consistent with the findings of the previous two cases referenced. This case was *Smith v. Command* 204 N.W. 140 and was decided June, 18th 1925.

Two cases germane to the claim that the Virginia Sterilization Act was cruel and unusual punishment were mentioned. First, a case from the United States Court of Appeals declared a sterilization law in Iowa unconstitutional. In this case, *Davis v. Berry* 216 Fed. 413, the Court held that the contested statute was not consistent with the requirements of due process and that it constituted cruel and unusual punishment. Secondly, in Washington *State v. Feilen* held that a penal law mandating the sexual sterilization as punishment for a crime was not cruel and unusual punishment. Whitehead sought to distinguish *State v. Feilen* from *Buck v. Bell*. He said that “the Virginia law is not punitive but is a eugenical measure. The plaintiff in error here has been convicted of no crime.” Yet, she is subject to the same “punishment.”

The main arguments for the plaintiff in error appear to have adjusted slightly to accommodate the concerns in the opinion written by the Virginia Supreme Court. There were two main arguments contained in the brief written by Counsel Whitehead. They are that the Virginia Sterilization Act does not provide due process of law nor does it give Carrie Buck and other inmates in the SCEFM equal protection of the law. Both due process and equal protection are guaranteed in the Fourteenth Amendment of the United States Constitution. I will discuss both arguments as they are articulated in the “Brief for the Plaintiff in Error.”
The deprivation of due process argument began with a contention that the salpinectomy of Carrie Buck allowed by the Virginia Sterilization Act “is illegal in that it violates her constitutional right of bodily integrity.”22 In a ruling on the Due Process Clause of the United States Constitution, *Munn v. Illinois* 94 U.S. 143 defined the phrase “deprivation of life” as “the inhibition 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.” The “Brief for the Plaintiff in Error” argued that sexual sterilization falls within the “deprivation of life” as defined by *Munn v. Illinois*.

Additionally, the brief sought to specify how an act is able to meet the conditions of due process. The Virginia Sterilization Act does require a hearing to occur before a special board prior the sexual sterilization operation and that any appeals may be heard in a court of law. However, “this fact standing alone does not meet the constitutional requirement of due process of law...we must look to the substance rather than the form of the law...for the form of the procedure cannot convert the process used into due process of law.”23 Counsel Whitehead explained that each of the cases referenced regarding due process in the opinion by the Virginia Supreme Court in *Buck v. Bell* were all proceeded lawfully. But, “the result of the proceeding under the Virginia Act is illegal, in that it violates her bodily integrity and is a deprivation of her life and liberty.”24

*Hurtado v. California* held that “any legal proceedings enforced by public authority, whether sanctioned by age and custom or newly devised in the discretion of the legislative power, in the furtherance of the general public good, which regards and preserves these principles of liberty and justice must be held to be due process of law.” So, according to

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22 Whitehead, “Brief for Plaintiff in Error” p500.
Hurtado v. California, due process not only requires legal proceedings but also that the law preserve the liberty of citizens. And, it is "the inherent right of mankind to go through life without mutilation of organs." The brief claims this inherent right existed both before and after police power was created. Ultimately, the "Brief for the Plaintiff in Error" argues that the Virginia Sterilization Act may be legal in its form, but its substance denies Carrie Buck due process of law. It contends that statute does not preserve her liberty to go through life without her sexual organs mutilated.

The second argument advanced by the brief for the plaintiff in error was that the Virginia Sterilization Act denies equal protection of the law to Carrie Buck and others committed to the SCEFM. The Virginia law offends the constitutional guarantees of the Fourteenth Amendment to the Constitution of the United States and should therefore be rejected. Counsel Whitehead explained that the said act creates a separate class for "those mentally defective persons who are confined in State institutions. [The act] does not apply to any [mentally defective person] who is not so confined in a State institution." His argument was that all feeble-minded people belong together in one class, and to treat those confined in mental institutions differently than those that are not is an unequal application of the law.

Although the State is able to make classifications for the purposes of laws, Gulf, Colorado R.R. Co. v. Ellie 165 U.S. 150 was cited saying that "the mere fact of classification if not sufficient to relieve a statute of the reach of the equality clause of the Fourteenth Amendment...and the classification must be based upon some reasonable grounds in the light of the purpose sought to be attained by the Legislature and must not be an arbitrary selection." Countless cases have appealed to the reasonable and non-arbitrary standards of classification. Counsel Whitehead said of equal protection that "the true principle requires something more than

25 Whitehead, "Brief for Plaintiff in Error" p502.
a designation by which the class may be identified. The characteristics which serve as a basis for classification must be of such a nature as to mark the class so designated as peculiarly requiring exclusive legislation.” The brief for the plaintiff in error argued that the Virginia Sterilization Act is unnecessary and the class upon which the law applies does not require exclusive legislation. This is due to the fact that the feeble-minded people are already institutionalized and this fact already prevents those people from procreating. So, if the purpose of Virginia statute is to prevent procreation of the feeble-minded then object of the act is met without requiring the sexual sterilization of inmates.26

Furthermore, in response to the opinion written by Justice West for the Virginia Supreme Court, Counsel Whitehead clarified that Carrie Buck is not seeking the power to procreate. That is already denied to her because she is segregated from society at large. Rather, “we deny that the state has the right to force this plaintiff, who is at present segregated in the State Colony...to undergo the surgical operation of salpingectomy for the purpose of rendering her sterile.”27 A law requiring the sexual sterilization of a person who is already denied the right to procreate is unreasonable and arbitrary. On this point the brief for the plaintiff in error referenced Haynes v. Lapeer. It held that if a law “fails to include and effect alike all persons of the same class, and extends immunities or privileges to one portion and denies them to others of like kind, by unreasonable or arbitrary subclassification, it comes within the constitution prohibition against class legislation.”

Two other cases were mentioned that specifically discussed classifications made by laws requiring sexual sterilization. In Smith v. Command the contested law mandated the sexual sterilization of mental defectives that “would not be able to support and care for his children if

26 Whitehead, “Brief for Plaintiff in Error” p503.
27 Whitehead, “Brief for Plaintiff in Error” p504.
any and such children would probably become charges by reason of his own mental defectiveness." The Supreme Court of Michigan in this instance found the law unconstitutional as it applied only to those unable to support their own children. "In that it does not apply to those of the class who may be financially able to support their children, it is not made applicable alike to all members of the class." Counsel Whitehead argued the classification in the Virginia Sterilization Act to be of a similar unconstitutional nature as the law challenged in Smith v. Command.

Also, as mentioned in this depth study previously, the statute disputed in Smith v. Board of Examiners only sexually sterilized feeble-minded inmates of charitable institutions. The Supreme Court of New Jersey found that classification to be unconstitutional on equal protection grounds. And, the Supreme Court of Virginia differentiated the New Jersey case from Buck v. Bell in that "the right to sterilize [in the New Jersey statute] did not as in Virginia depend upon whether the welfare of the patient would be promoted by the operation." The "Brief for the Plaintiff in Error" responds to the differentiation made by the Supreme Court of Virginia by reiterating the foundation of its objections. The brief argued that the New Jersey law and the Virginia law are not properly differentiated because both "results are undoubtedly the same." Hence the Virginia Sterilization Act should also be found in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

The last section of the brief in error for the plaintiff attempted to explain that the Virginia Sterilization Act is dangerous in its nature. If the judgment of the Virginia Supreme Court of Appeals were to be affirmed by the Supreme Court of the United States, "then the limits of the power of the state (which in the end is nothing more than the faction" in control of the
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government)... have not been set... we will have [as Plato desired] 'established in the state the science of medicine and a corresponding system of judicature.' A reign of doctors will be inaugurated... even races may be brought within the scope of such a regulation and the worst forms of tyranny practiced." In sum, the plaintiff in error argued that Virginia Sterilization Act should be rendered void to prevent Carrie Buck and other inmates of the SCEFM from being sexually sterilized without due process of law or equal protection of the law as required by the Fourteenth Amendment to the United States Constitution.

b. Arguments for the Defendant in Error

Representing Dr. J.H. Bell was Aubrey E. Strode, Attorney for the Defendant in Error. She urged that the Supreme Court of the United States affirm the decision of the Supreme Court of Appeals in Buck v. Bell. Counsel Strode also referenced eugenics as an ancient tradition. She explained that the Virginia Sterilization Act has the same end as the ancient traditions, but that "the science of heredity and eugenics accomplish[es it]... more humanely and even with benefit to the already inflicted individual." She further stressed that the legislation was motivated by individual and societal welfare, and that the patient upon which sexual sterilization would be performed would afterward have greater liberty and access to the world outside of the SCEFM. The brief for the defendant in error also revealed that the contested act passed unanimously in both houses of the General Assembly of Virginia. And, it passed only after the laws of heredity were discovered, whereas before the discovery of heredity, similar measures were rejected in the same Assembly. The "Brief for the Defendant in Error" outlined its argument in three main points. It argued that the Act does not impose cruel and unusual punishment, that the act does afford due process of law, and that the act is a valid exercise of the police power.

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30 Whitehead, "Brief for Plaintiff in Error" p508-509.
31 Strode, "Brief for the Defendant in Error" p 531.
Counsel Strode began her arguments on cruel and unusual punishment by simply stating that the Virginia Sterilization Act is neither a criminal statute nor an act with any punitive motive. She articulated that those facts alone provided conclusive reason to reject any claims about cruel and unusual punishment. If the Court were to find otherwise, she also clarified that the Act does not punish. Rather, “it is designed to be beneficial and remedial for those within its terms.” In fact, she argued, the sexual sterilization of the feeble-minded actually gives them a greater liberty. This is because, once sexually sterilized, the mental defectives of society are able to no longer be confined and leave the institution. She referenced State v. Feilin which held sexual sterilization to be lawful in a criminal case. Moreover, she reminded the Court that the procedure in question is essentially painless and not harmful to the general health of the patient. Lastly on this point, she wrote that “cruel and unusual punishment applies and is directed against punishment of a barbarous character, involving torture, such as drawing and quartering the culprit, burning at the stake,” etc. It is for each of these reasons that the “Brief for the Defendant in Error” advocated that the act in question was constitutional within the prohibition of cruel and unusual punishment.

Concerning the constitutional guarantee of due process of law, the brief for the defendant in error said that due process had four conditions. The Due Process Clause of the Fourteenth Amendment to the United States Constitution mandates “(1) a duly established impartial tribunal having (2) lawful jurisdiction to hear and determine only after (3) previous reasonable notice and (4) an opportunity to heard, before any binding order can be entered affecting a person’s liberty.” She reiterated the same arguments made to the Virginia Supreme Court about the legality of the proceedings and found all four conditions of due process to be fulfilled in the said

33 Strode, “Brief for the Defendant in Error” p 538.
34 Strode, “Brief for the Defendant in Error” p 539.
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act. Twinning v. New Jersey was referenced saying that due process required the conditions she outlined. The opinion from Twinning v. New Jersey also stated that “the Legislature may determine what difference in situation, circumstances and needs call for a difference of class.” In essence, due process is found in the form of the proceedings, not in the substance. The legislative body decides what classifications are reasonable. Counsel for the defendant argued that the proceedings against Carrie Buck met all four conditions of due process and that the Court should presume that the statute is reasonable.

The “Brief for the Defendant in Error” outlined its argument that the Virginia Sterilization Act is a valid exercise of the police power of the Commonwealth in three primary sections. The first section discussed police power as a valid exercise in general. Counsel Strode advanced again her argument made to the Supreme Court of Virginia from Barbier v. Connoly. In that case the United States Supreme Court held that constitutional amendments (including the Fourteenth Amendment) were not devised to cause interference in State police power. Additionally, the United States Supreme Court held in Jacobson v. Massachusetts that “the police power of a state must be held to embrace, at least, such reasonable regulations established directly, be legislative enactment as will protect the public health and the public safety...even liberty itself...is not unrestricted license to act according to one’s own will.”

On the question of liberty, Counsel Strode mentioned that the liberty of Carrie Buck was already restricted. The feeble-minded are instantly deprived of liberty when committed and confined to a mental institution. Not only are the feeble-minded like Carrie Buck already segregated from society and prevented from procreation, but Virginia law also stipulates that they are not permitted to be married. With questions of liberty in mind, the “Brief for the Defendant in Error defined the specific question before the United States Supreme Court to be
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"whether the State in its judgment of which is best for the appellant and for society may through the medium of the operation provided for by the sterilization statute restore to her the liberty, freedom and happiness which thereafter she might safely be allowed to find outside of institutional walls."35

The brief provided two final arguments as to why the Virginia Sterilization Act is a valid exercise of the police power of the State in general. The defendant claimed that the sterilization operation is not illegal in itself. This argument was rationalized by the contention that sexual sterilization does not damage the patient's health. Also, "no legal reason appears why a person of full age and sound mind and even though free from any disease...may not by consent have the operation performed for the sole purpose of becoming sterile." Thus, sterilization is not legally malum in se, or evil in itself. Lastly, the brief raised the question of who ought to decide for the feeble-minded people what is in their best interest. Carrie and her mother were not of acceptable full age to make sound judgment due to mental defect and her father was dead. In such a situation the defendant suggested that the State is the only remaining appropriate guardian to make decisions on behalf of Carrie because she is in the custody of the State.36

The second section provided by the defendant in error argued that the Virginia Sterilization Act is a legitimate use of police power spoke to the issues surrounding equal protection of the law. The "Brief for the Defendant in Error" argued that "the statute is part of a general plan applicable to all feeble-minded...for all feeble-minded persons are subject to commitment."37 The fact that not all feeble-minded people are committed and officially adjudicated to be feeble-minded does not alter the equal application of the law. If all feeble-minded people were to be committed, then they would be equally subject to the mandates in the

35 Strode, "Brief for the Defendant in Error" p 548.
36 The "Brief for the Defendant in Error" overlooks R.G. Shelton as Carrie Buck's named guardian.
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sterilization law. Counsel Strode provided a variety of different extractions from Virginia law indicating the equal status of the "feeble-minded person and idiot." For example, each superintendent must go through the same petition procedure to officially deem a person to be feeble-minded and the mentality tests are the same for all patients. Ultimately, if a supposed feeble-minded person on the outside of the institution were to be committed, they would be subject to all of the same proceedings as Carrie Buck. "The Commonwealth has provided a general scheme and plan applicable to all feeble-minded and having only such provisions of flexibility as may make it properly meet the special needs of individual cases." 38

That the Virginia Sterilization Act is based upon a reasonable classification was the contention of the third section favoring Virginia's police power. Counsel Strode explained that the feeble-minded people not committed to an institution are still subject to all of the general statutes and subject to confinement. So, those only supposed to be feeble-minded can easily be brought into the SCEFM and then petitioned to be sexually sterilized in the same way as Carrie Buck. This demonstrates that the act in question does reach all feeble-minded people equally. The brief for the defendant in error sketched five particular grounds by which the classification of custody is a reasonable classification. First, "the patient is deprived of her liberty, and her status in respect of freedom of employment, occupation and movement is completely changed. Second, "she can no longer make decisions for herself or have them made by natural guardians." Third, the patient "becomes ward of the State which takes over her support and welfare." Fourth, "she may have her liberty and freedom restored only to such extent and upon such conditions as the State may determine." Fifth, she becomes indeed of a class set apart, all of whose living conditions have been taken in charge by the state." 39 For these five reasons the "Brief for the

38 Strode, "Brief for the Defendant in Error" p 554.
39 Strode, "Brief for the Defendant in Error" p 555.
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Defendant in Error” articulated that the classification of custody (or not) is based in reason. And, such classifications are permitted by the United States Constitution. “The state may classify persons and objects for the purpose of legislation if the classification is based on proper and justifiable distinctions, considering the purpose of the law.”

c. The Opinion of the United States Supreme Court

The case of Buck v. Bell was decided in the Supreme Court on May 2, 1927. The decision was eight to one. Justice Oliver Wendell Holmes delivered the opinion of the Court. He was joined by Chief Justice William Howard Taft, and Justices Willis Van Devanter, James C. McReynolds, Louis D. Brandeis, George Sutherland, Edward T. Sanford, and Harlan F. Stone. The written opinion is relatively very short and it reduced the issues of Buck v. Bell contained in the briefs by a lot. The opinion said that “the case comes here upon the contention that the statute authorizing the [sexual sterilization of Carrie Buck] is void under the Fourteenth Amendment as denying to the plaintiff in error due process of law and the equal protection of the laws.”

Regarding due process, the Court first deferred to the evidence collected in the case while in the Circuit Court of Amherst County. Justice Holmes detailed the requirements of the statute for due process. And, without a lot of explanation found that Carrie Buck was duly proceeded against. He wrote that “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 state and after months of observation, there is no doubt that in that respect the plaintiff in error has had due process of law.”

The plaintiff in error attacked the substance of the law rather than the procedure in the denial of due process contention. Of this the opinion says that “obviously we cannot say as a matter of law that the grounds do not exist, and if they exist they justify the result...it would be
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strange if it could not call upon those who...sap the strength of the State for these lesser sacrifices, often not to be such by those concerned, in order to prevent out being swamped with incompetence. It is evident that the Court believes the Virginia Sterilization Act to be for the welfare of society. The opinion says that "it is better for all of 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."

The only case referenced in the opinion of the Court is Jacobson v. Massachusetts. In Buck v. Bell the Supreme Court held that the legitimacy extended to police power in Jacobson v. Massachusetts was broad enough to qualify the Virginia Sterilization Act as a constitutional use of police power as well. Actually, Justice Holmes in allowing this use of police power famously said that "three generations of imbeciles are enough." The Court held that the Virginia Sterilization Act did satisfy the requirements of the Equal Protection Clause of the Fourteenth Amendment. Justice Holmes merely says of this 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." The judgment of the Virginia Supreme Court was affirmed, and Carrie Buck was so ordered to be sexually sterilized. Justice Pierce Butler dissented, but did not provide a written opinion.

V. The Legal, Social, and Political Impacts of Buck v. Bell

Buck v. Bell has been cited in United States Supreme Court opinions and in other Courts on a variety of different matters. I will discuss a representation of the citations here. The most recent cases that have referred to Buck v. Bell are Tennessee v. Lane 541 U.S. 549 and Board of Trustees v. Garrett 531 U.S. 356. Each were regarding the Americans With Disabilities Act passed by the United States Congress in 1990. In Tennessee v. Lane Justice Souter critiqued the
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jugement of *Buck v. Bell*. He argued that the Court should not endorse “the basis for some of the very discrimination subject to constitutional remedy under *Buck v. Bell*.” In *Board of Trustees v. Garrett* there was discussion of the Americans With Disabilities Act as being a discriminatory measure. The opinion of the Court indicated that the eugenic motivations behind Virginia Sterilization Act were not present in the Americans With Disabilities Act. Specifically, “some States, adopting the tenets of the eugenics movement of the early part of this century, required extreme measures such as sterilization of persons suffering from hereditary mental disease. These laws were upheld against constitutional attack in *Buck v. Bell*...but there is no indication that any State had persisted in requiring such harsh measures as of 1990 when the ADA was adopted.”

Additionally, many cases have referenced the transformation of the Equal Protection Clause away from its characterization by Justice Holmes in *Buck v. Bell* as an argument of “usual last resort.” In a dissenting opinion from *Regents of University of California v. Bakke* 438 U.S. 265 it was said that Justice Holmes description of the Equal Protection Clause is “worse than desuetude, the Clause was early turned against those whom it was intended to set free.” In this dissent it was explained that the use of the Equal Protection Clause in establishing the unconstitutionality of “separate but equal” redefined the Clause as not a “usual law resort,” but actual a quite important argument with regard to discrimination. Furthermore, the opinion of the Court in *Zablocki v. Redhail* 434 U.S. 374 commented on this point. The Supreme Court in that case said over a half-century after *Buck v. Bell* that, contrary to Justice Holmes characterization, “today equal protection doctrine has become the Court’s chief instrument for invalidating state laws.”
Moreover, a few cases involving abortion have cited Buck v. Bell including *Roe v. Wade* 410 U.S. 113 and *Doe v. Bolton* 410 U.S. 179. In *Roe v. Wade*, the Court said that *Buck v. Bell* established that the right to privacy is not an unlimited right, and that it could be limited for the welfare of society. This establishment led the Court in *Roe v. Wade* to "conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation." *Doe v. Bolton* used *Buck v. Bell* to ascertain that the State has a right to protect the interests of society and this right includes regulation of surgical procedures. Written in the opinion of that decision was "while childbirth endangers the lives of some women, voluntary abortion at any time and place regardless of medical standards would impinge on a rightful concern of society."

The greatest impact of *Buck v. Bell* is that it legitimized the use of eugenics to remove socially undesirable people from society. As eugenics and the science of heredity evolved, States did pass more eugenics laws. However, while it did not overturn *Buck v. Bell* outright, *Skinner v. Oklahoma* 316 U.S. 535 limited laws requiring sexual sterilization. In *Skinner v. Oklahoma* the Supreme Court of the United States unanimously held that an Oklahoma statute providing for the sterilization of criminals was unconstitutional. The decision held that the Oklahoma statute was an illegitimate use of police power and did offend the protections of the Fourteenth Amendment to the United States Constitution.

*Skinner v. Oklahoma* limited sexual sterilization and eugenics legally, but as the United States efforts in World War Two advanced, sterilization and eugenics became associated with Germany's Nazi Party. It was at this point in the twentieth century that several states attempted to reduce the number of mandatory sterilization procedures occurring in their mental institutions.

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as the laws declined in political popularity.41 Today, the mentally disabled are much more accepted as members of society than at the time of Buck v. Bell. They are “no longer viewed as helpless recipients of the state’s benevolence, but as people who can and should be treated with dignity and who are presumed to be competent to make decisions for themselves unless proved otherwise.”42 Some still believe that “three generations of imbeciles is enough,” but for now the feeble-minded are mostly socially accepted. This social acceptance in 2008 marks a complete departure from the time and opinion of Buck v. Bell.

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