



“THREE GENERATIONS OF IMBECILES ARE ENOUGH.” JUSTICE OLIVER WENDELL HOLMES JR IN *BUCK V BELL*

by **George Barrie**, Professor Emeritus and former dean
University of Johannesburg, Faculty of Law

One of the less glorious moments in the history of the US Supreme Court is the case of *Buck v Bell*.¹ It emanated from the eugenics² movement, which swept the USA in the 1920s and 1930s led by one Harry H Laughlan. The eugenics movement believed that inferior and so called ‘faulty persons’ should be sterilised or castrated to remove their desire as well as reproductive ability. The movement’s credo was simple: “to purify the breeding stock of the race at all costs”. The movement’s self-assigned task was to eradicate reproductive inferiority from the USA once and for all. It created the Committee to Study and to Report on the Best Practical Means of Cutting Off the Defective Gene Plasm in the American Population. This committee was chaired by the president of Stanford University and consisted of various academics from the USA’s best universities such as Harvard, Princeton, Yale and Chicago amongst others.

The eugenics movement led to the US Supreme Court case of *Buck v Bell* where the question of how freely a state of the USA could exercise the power of sterilisation came to a head. The case revolved around a 17-year-old girl from Virginia (Carrie Buck) who was deemed to be of low intelligence and had recently given birth to an illegitimate child. She was consequently placed in the Virginia Colony for Epileptics and Feeble-Minded at Lynchburg where her mother also happened to be an inmate.

In 1924 Buck was selected for sterilisation by the colony’s superintendent Dr John Bell. It was contended that Buck, her mother and daughter were three straight generations of defectives, were incapable of producing other than mental defectives and should be sterilised for the good of society. When given the Binet-Simon Test (which has become the modern IQ test) Buck was determined to have a mental age of nine and her

mother eight. Officially this fell in the classification of ‘moron’.

The Supreme Court ruled by a majority of 8-1 that Buck be sterilised. The majority opinion was surprisingly written by the then 86-year-old Justice Oliver Wendell Holmes Jr – unarguably the most venerable and quoted US jurist of all time whose felicitous language is turned to regularly.

Justice Holmes succinctly stated in his judgment that Buck was a feeble-minded woman; the daughter of a feeble-minded woman in the same institution, and the mother of an illegitimate feeble-minded child. He agreed with those who feel that sterilisation in society was necessary to prevent society from being swamped with incompetence. He saw the solution being that the world would be better off not waiting for individuals to propagate degenerates who become criminals or imbeciles who starve, but to compulsory vaccination, which should be broad enough to cover cutting the fallopian tubes.

His ringing conclusion was that “Three generations of imbeciles are enough”. Justice Holmes was supported by the liberal Justice Louis D Brandeis and the Chief Justice and former US President William Howard Taft. The dissenting Justice Pierce Butler did not explain his dissent in a written opinion.

Fifteen years later, however, in *Skinner v Oklahoma*,³ the US Supreme Court invalidated an Oklahoma statute that provided for compulsory sterilisation of persons convicted three times for felonies showing moral turpitude, but which did not apply to “white-collar” crimes such as embezzlement. The Court objected to the discrimination between the offences. The Court further emphasised that marriage and procreation are fundamental to the very existence and survival of the race.

It is worth noting that until recently, sterilisation laws



Above Vivian Buck, Carrie Buck's baby. Opposite Carrie Buck with her mother Emma Buck at the Virginia State Colony for Epileptics and Feeble-minded in 1924.

“JUSTICE HOLMES SAW THE SOLUTION BEING THAT THE WORLD WOULD BE BETTER OFF NOT WAITING FOR INDIVIDUALS TO PROPAGATE DEGENERATES WHO BECOME CRIMINALS OR IMBECILES WHO STARVE, BUT TO COMPULSORY VACCINATION.”

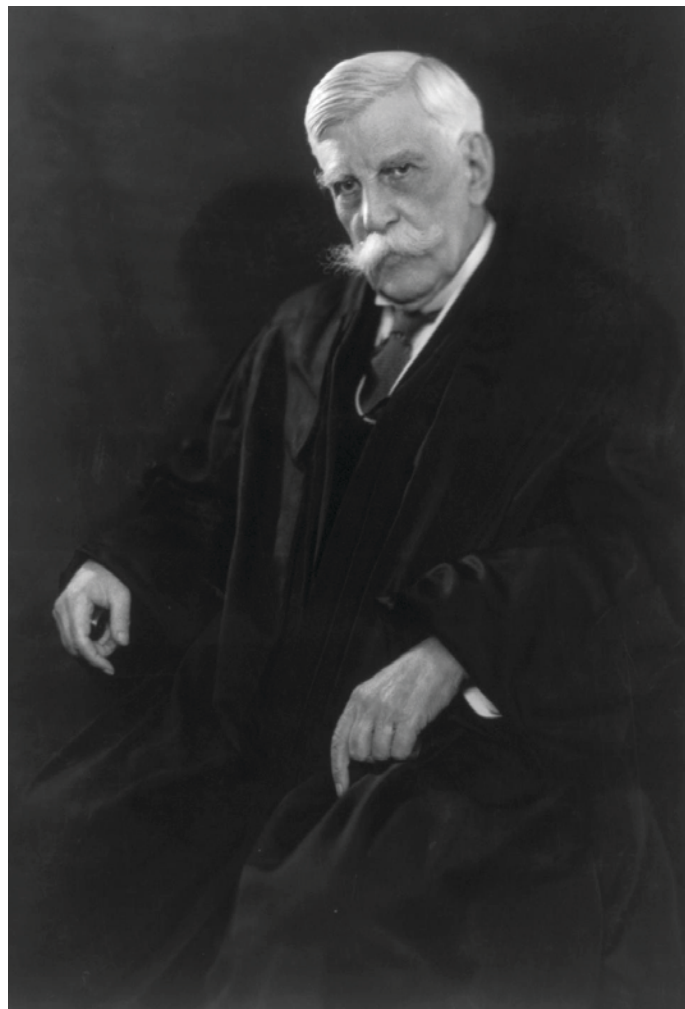
remained on the books of some US states but were not widely used. This is surprising when account is taken of *Griswold v Connecticut*⁴, where the Supreme Court struck down a statute forbidding the use of contraceptives and *Roe v Wade*⁵ where it was held that the legislature has only a limited right to regulate, and may not completely proscribe, abortion.

In late September 1927, Carrie Buck, after exhausting all legal options, was scheduled for sterilisation and the procedure was carried out the following month. It later emerged that Carrie Buck was not disabled in any meaningful sense. She read newspapers every day and enjoyed the then new craze for crossword puzzles. An academic who later interviewed Carrie Buck described her as “not a sophisticated woman but neither mentally ill nor retarded”.⁶

Was the judgment of Justice Holmes in *Buck v Bell* an example of the justices of the Supreme Court expressing the popular sentiments of the time or was it a perfect example of Holmes’ ‘bad man or prediction theory’ of law. According to Justice Holmes in his *Collected Legal Papers*⁷ one should look at the law from the perspective of the bad man. Holmes argues that a bad man does not care about the source of a legal right or obligation; all he cares about is how a court will decide if he acts in a particular way. Holmes, in rejecting the higher claims of reason and ethics, declares that

“If we take the view of our friend the bad man we shall find that he does not care two straws for the axioms or deductions, but he does want to know what....courts are likely to do in fact. I am much of his mind. The prophecies of *what the courts will do in fact*, and nothing more pretentious, are what I mean by the law”.⁸

It thus appears that in *Buck v Bell* the ethical issues underlying



the case played no role, but the law applied was what the judges made it to be based on *their* prejudices, *their* perceptions and *their* views of what is good for the community. In so doing, Justice Holmes argued, judges go beyond simply interpreting the law, in reality they *make* law. Justice Holmes argued that judges made their decisions based on what *they* think is right, on what *they* think makes practical sense for the community.⁹

It is incomprehensible to conceive that the ruling in *Buck v Bell* gave states in the USA the right to perform surgery on healthy citizens against their will – a liberty never before extended in any advanced country. Yet the case attracted almost no attention. The *New York Times* gave it a small mention. The *News Leader of Virginia*, where the matter was a local story, did not report it at all. **A**

Notes

- 1 274 US 200 (1927).
- 2 Susan Currell and Christina Cogdell (eds.), *Popular Eugenics: National Efficiency and American Mass Culture in the 1930's* (2006) Athens: Ohio University Press.
- 3 316 US 525 (1942).
- 4 381 US 479 (1965).
- 5 410 US 113 (1973).
- 6 Bill Bryson, *One Summer* (2014) New York: Anchor Books at 368.
- 7 (1920) London: Constable at 172.
- 8 Italics supplied.
- 9 David Johnson, Steve Pete and Max du Plessis *Jurisprudence* (2001) Durban: Butterworth at 163.