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Buck v. Bell:

Eighty Years of Challenges for Parents with Developmental Disabilities

Kelley D. Jacobs

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On May 2nd, 1927, Justice Oliver Wendell Holmes delivered the Supreme Court's decision in the case of *Carrie Buck v. J.H. Bell* (Smith & Nelson, 1989). In the majority opinion, Holmes stated that, "It is better for all the world, if instead of waiting to execute offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian Tubes..." (Smith & Nelson, 1989, p.178). Thus, it was determined that "three generations of imbeciles [were] enough", and the poster woman for American eugenics would be a victim of involuntary sterilization (Smith & Nelson, 1989, p.178). Perhaps unknown to Holmes, the outcome of *Buck v. Bell* was far-reaching beyond just Carrie Buck. This monumental court decision opened the door for many states, including Virginia, to enact a sterilization law. In addition, it helped nurture a stigma against people with disabilities as being unfit for life and parenting. The stigma can still be seen today in both social and political contexts as noted in contemporary court cases (e.g., *Holtz v. Holtz* and *Hankins v. Hankins*).

The Birth of a Pseudo-Science

The trial of *Buck v. Bell* has its origin in eugenics, a scientific movement that flourished throughout the early 20th century. The basis of eugenics was a distorted version of social Darwinism. In 1865, Sir Francis Galton, Charles Darwin's cousin, published an article in *Macmillian's Magazine* that would begin a scientific love affair with race. In "Hereditary Talent and Character", Galton laid down the foundations for his hope for a scientific religion that would be known as eugenics. This article revolved

around the idea of a movement that would create “improvement of the breed of mankind” (Johnson, 1914, p.9). Galton finally settled on the term eugenics, which he defined as “a brief word to express the science of improving stock, which is by no means confined to questions of judicious mating” as well as “to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have had” (Tucker, 1994, p.46). In his 1904 paper, “Eugenics, Its Scope and Aims”, Galton reiterated the importance of race in this definition by saying “Eugenics is the science which deals with all influences that improve the inborn qualities of a race.” (cited by Johnson, 1914, p. 10). In 1908, Galton continued with the same definition, claiming eugenics is an area of study that “may improve or impair the racial qualities of future generations either physically or mentally” (cited by Johnson, 1914, p. 10).

The Eugenics Movement in the United States

Though Eugenics is most remembered for its basis in the Nazi movement and the Holocaust, the United States had an extensive eugenics movement that preceded the Germans. Though some of the United States eugenics movement centered around racism and ending immigration, much of it had to do with new social constructs which did not include the feeble-minded. Feeble-minded is a catch-all term that was used to describe various levels of mentally or morally disabled (Trent, 1994; Reilly, 1991). It could mean an epileptic, or an immoral beggar. That there was no scientific definition for the term made its validity questionable. The United States Eugenics movement took off in the early 1900s. The late 1800s had seen a rise in institutionalization though many doctors

involved realized that institutions were not the answer for many of these so called “imbeciles” (Reilly, 1991).

One of the most notorious figures from United States Eugenics was Henry Goddard. Goddard translated the Simon-Binet intelligence test for use in the United States. The test, originally created by Binet to determine areas of need for underachieving students, was used by Goddard on residents at the Vineland Training Center (Trent, 1994). After Goddard began to show his data to other scientists, intelligence testing spread through institutions across the United States. Goddard also used hereditary studies to his advantage. In 1912, Goddard published a study called *The Kallikak Family*, which was a study for an entire family of “moral imbeciles” (Trent, 1994, p. 160). With new hereditary studies, Goddard hoped to show the genetic link seen in cognitive and moral ability. In Chapter 3 of *The Kallikak Family* (1914), Goddard explained that from the study, it “is inevitable that all this degeneracy has come as the result of the defective mentality and bad blood” (p.195). He went as far as to claim that “the biologist could hardly plan and carry out a more rigid experiment or one from which the conclusions would follow from inevitably” (Goddard, 1914, p.195) As Trent stated in his *book Inventing the Feeble Mind* (1994), “to solve the social problem of the Kallikaks, Goddard turned to familiar solutions: marriage restriction, segregation and sterilization.” (p. 165)

Though Goddard himself was not enough to fuel an entire movement, his work, and the work of other American scientists such as Henry Laughlin put the United States in the forefront of the eugenics movement. Henry Laughlin, another famous United States eugenicist, created the model law for Sterilization in 1914 (White & Hofland, 2002). Along with this law, Laughlin included pedigree charts which were to explain the

correlation between genetics and such traits as alcoholism and feeble-mindedness. This law would become the basis for the Virginia Sterilization Act and the basis for *Buck v. Bell*.

The Virginia Colony and Carrie Buck

The Virginia Colony for the Epileptic and Feeble-minded was opened in 1910 in Lynchburg. Originally intended for people with epilepsy and people with severe mental retardation, its superintendent Albert Priddy lobbied to have it opened to those known as feeble-minded (White & Hofland, 2002). As such, the Virginia Colony became the largest asylum in the United States.

In April 1920, Carrie Buck's life was first altered at the hands of eugenicists. Carrie Buck's mother, Emma Buck, was detained and examined by a medical examiner to determine whether or not she was "feeble-minded". After asking her to do such things as hand a book to a woman, and to give her name and birth date, Emma Buck was declared feeble-minded. J.S. Davis considered her "a suitable subject for an institution for feeble-minded" (Smith & Nelson, 1984, p.14). Carrie Buck then eleven, was taken in by her foster parents, J.T. and Alice Dobbs. In 1923, the Dobbs petitioned to the court to have Carrie reviewed for admittance to the Colony (Smith & Nelson, 1984). Like her mother, Carrie was determined a feeble-minded individual. However, Carrie would not be admitted until 1924. Unknown to her foster parents, she had been raped by their nephew and was pregnant (White & Hofland, 2002). After the birth of her daughter Vivian, Carrie joined her mother in the Colony.

Buck v. Bell: Albert Priddy's well-orchestrated trial

It was no surprise when the Colony superintendent Albert Priddy determined that Carrie Buck should be sterilized. As a young woman with one child already, she was a threat to the Colony. She could easily produce more degenerate children to be wards of the state. However, since officials were sure that this law would be challenged, they decided to make Buck's story a test case for any future discrepancies. Though Carrie did not want to be sterilized, the court case began with the support of the state.

The original case was held on November 18, 1924 at Amherst County court house. With a young, inexperienced lawyer as her only hope, Carrie went to trial (Reilly, 1991). Harry Laughlin submitted a deposition for the trial on behalf of the Colony. In this deposition, Laughlin stated that Carrie was "part of the 'shiftless, ignorant and worthless class of anti-social whites of the south'" (cited by Reilly, 1991, p.86). Oddly enough, Laughlin had never met nor examined Carrie. He determined this from reading her medical records, which were written by Priddy and other officials at the Colony. With support from Laughlin and other eugenicists such as Arthur Estabrook, the ruling was upheld. Though Carrie's lawyer, R.G. Sheldon, appealed the decision to the Virginia Supreme Court on the basis of the Equal Protection Clause, the decision of the Amherst court was upheld (Reilly, 1991). In February of 1926, Carrie brought her case to the United States Supreme Court in the hope of a fair decision.

As Carrie's case was already a well-designed plan of the Colony and other eugenicists, the Supreme Court appeal was no different. Carrie's lawyer was Irving Whitehead, a friend of Priddy and the state's lawyer Aubrey Strode. In Smith and Nelson's (1989) definitive work on the trial, these authors not only gave proof of the

friendship and working relationship between Strode and Whitehead, but also proof of Whitehead's lack of interest in fighting the case. In his appeal to the state of Virginia, "the brief was only five pages long, cited only one case as precedent, and concluded with the statement that if the Virginia law was ruled constitutional, then 'trials are a farce'" (Smith & Nelson, 1989, p.175). On the other hand, Strode's brief was 40 pages long and fully supported Bell's defense, citing several cases that set precedent.

In addition to being set up, another main reason for Carrie's sterilization was that her daughter, Vivian, was supposedly "feeble-minded" as well. Vivian was referenced as the third generation in Holmes' decision. However, as Gould (1985) pointed out in his article, "Carrie Buck's Daughter", "she was a perfectly normal, quite average student, neither particularly outstanding nor much troubled." Though Vivian died at age 8 of colitis, Gould reviewed her school records. In her short life, she scored average in most academic subjects and was a model young girl.

"Three Generations of Imbeciles are Enough": Bell's legacy

It came as no surprise when Supreme Court Justice Holmes delivered the court majority. In an 8-1 ruling, the decision for sterilization was upheld. It was here that Holmes stated that "three generation of imbeciles[was] enough" (cited by Smith & Nelson, 1989, p. 178). The immediate and long-term effects were clearly evident. Following this decision, twenty states passed sterilization laws. Of these laws, only three were later found unconstitutional (Haavik & Menninger, 1981). Sixteen states still have sterilization laws, with thirteen of those states specifically including people with mental retardation (Haavik & Menninger, 1981). *Buck v. Bell* gave the constitutional support needed for these laws to thrive.

Though sterilizations gradually tapered off beginning in the 1950s, approximately 70,000 individuals were sterilized across the United States as a result of the court case (Trembley, 1993). Of these 70,000, 8,300 occurred at the Lynchburg Colony alone. Despite cases such as the 1942 case of *Skinner v. Oklahoma* which declared Oklahoma's sterilization law unconstitutional, there has yet to be Supreme Court a ruling that reverses *Buck v. Bell*.

In the late 1980s, the American Civil Liberties Union found out about the Virginia sterilizations and filed a case against Virginia on behalf of those sterilized. They hoped to gain monetary rewards, a public apology, and reversal operations. Unfortunately, it would take years for an apology to be made. The victims of involuntary sterilization would also never see any monetary concessions for the pain and suffering they found (Trembley, 1993). As one victim, Mary Donald states in the documentary "The Lynchburg Story", she was told the surgery was for her health (Trembley, 1993). She did not know it would ruin her life, breaking up her marriage and leaving a void in her heart forever.

Beyond the immediate results are the social and political effects on individual lives that are not as obvious. One of the most harmful to persons with developmental disabilities is the social stigma associated with being mentally retarded. *Buck v. Bell* made it clear that those with developmental disabilities and other traits of so-called "feebleminded" were unfit to be parents. As parenthood is an inherent human right, this ruling also made it clear that those with mental retardation are unequal.

Dispelling the Myth of the Parent with Developmental Disabilities

In their book, *Sexuality, Law, and the Developmentally Disabled Person*, Haavik and Menninger II (1981) made the statement that “several groups, such as alcoholic, psychotic, and abusing parents, have been clearly labeled as unfit, yet none of these groups has been denied the right to procreate. Only retarded people (in some states) are deprived of this otherwise guaranteed constitutional right.” (p.66). Haavik and Menninger (1981) explained that people with mental retardation are often singled out because of two myths: The first is that people with mental retardation breed at a “prolific rate” (p. 66). Though the authors only referenced studies between 1945 and 1975, in these thirty years the average number of children produced by couples with developmental disabilities was no different, unless lower, than the average number for the rest of the population (Haavik & Menninger, 1981). Three studies referenced did find that those with low IQs procreate at a much higher rate. However, these studies were controversial because of the areas and populations tested (Haavik & Menninger, 1981).

The second myth is that the development of the child born to parents with developmental disabilities is stunted because of the level of childcare given. Though in some cases 22% of the children of these parents required some special placement in schools, the majority of the children had IQs in the average range (Haavik & Menninger, 1981). However, as in any study, IQ is not always the most accurate measure of “social and intellectual achievement” (Haavik & Menninger, 1981, p.78). The authors also

included results of studies where the parents received help from outside services and parent training. In these instances, the children fair better as well.

The Law and the Stigma of Being Disabled

Though there are some concerns about people with developmental disabilities ability to parent, the main problem is the generalization created by society and supported by the law. As mentioned, the ruling of *Buck v. Bell* has never been overturned. Pfeiffer (1994, p. 481) stated that “people with disabilities, any disability, had their rights limited in the immediate past in the United States and still do so today by existing state statues and the courts’ incorrect interpretation of other statues. They are constantly faced with the possibility of being deprived of fundamental rights that non-disabled persons enjoy”

Today, thirty eight states and Washington D.C. still closely follow and restrict the right people with mental disability have to be married and in turn, create a family (Pfeiffer, 1994). Pfeiffer (1994) maintained that these laws are here based on bias and the general public’s inability to understand the nature of disability. In a well-said and accurate statement, he stated that “a disability is a central part of the life an identity of a disabled person, but it is not simply a personal attribute....A disability is often a limitation because of an environmental barrier which is unnecessary...” (Pfeiffer, 1994, p. 485). This limitation is the stereotype perpetrated by society which was the basis behind Eugenics and *Buck v. Bell*. Unfortunately, this stereotype still influences court rulings on parental rights of parents with developmental disabilities.

Recent Rulings in Parental Rights' Cases

Though all people with disabilities stand a higher chance than people without disabilities of being discriminated against, those with developmental disabilities as a whole are seen less favorably than people with physical disabilities. Kirshbaum, Taube and Baer (2003) explained that “people with psychological and cognitive disabilities [which includes developmental disabilities] are the most stigmatized” (p. 37). Kirshbaum et al., have seen first hand the flaws of the legal system in relation to people with developmental disabilities. These flaws can be seen in recent cases involving custody rights of parents with developmental disabilities.

In the 1999 case *Holtz v. Holtz*, the North Dakota Supreme Court upheld a change of custody between April Holtz to James Holtz. Previously, April Holtz, a woman with a developmental disability, had custody of her daughter. James Holtz has a history of some marital violence and a short temper. April Holtz cited incidents of James slashing her tire, ripping a phone off the wall, and calling and threatening her parents. April also claimed that James hit her, though there was not sufficient evidence to prove this as she did not go to the police (North Dakota Court System, 1999). Despite this, it was April's developmental disability that determined the custody change. According to the court, “April has dyslexia, a learning disability, a low IQ, and is developmentally disabled”(North Dakota Court System, 1999). Though April received help from a court aide with maintaining family finances and other daily living skills, she still maintained a healthy relationship with her daughter. In the end, the court removed her daughter from her custody because they found “material change in circumstances based upon [April's]

mental incapacity to develop as . . . Jessica . . . grows older and develops in her own right” (North Dakota Courts System, 1999).

In another case in Michigan, a woman with a developmental disability, Mrs. Terry, had her children taken away because of what was considered neglect. Terry did not fill out paperwork on time and forgot appointments for medical care (Harrison, 2000). She required help to remind her, to help her with paperwork, and to help her adjust in new situations. This help was not always available which caused a lapse in care. However, instead of providing help with more public services, the court removed custody of her children from her and instead, placed them in a foster home. In this ruling, the judge even went as far as stating termination of parental rights proceedings do not constitute 'services, programs or activities' within the meaning of 42 USC 12132. Accordingly . . . a parent may not raise violations of the ADA as a defense to termination of parental rights proceedings” (Harrison, 2000). Therefore, what Terry needed, more in-home help, was not found a reasonable accommodation under the Americans with Disabilities Act.

In *Hankins v Hankins*, a father had custody taken away and given to the mother because of an aneurysm which caused seizures that were not always controlled by medication (Kirshbaum, et al., 2003). Though he appealed to the appellate court of Missouri, the father was not allowed even unsupervised visitations despite evidence that the mother’s main reason for challenging custody could have been from “difficulty agreeing on certain decisions regarding the child..” (Kirshbaum, et al., 2003, p.33). Kirshbaum, et al. concluded that “The appellate court refused to disturb the trial court’s decision on custody and visitation restrictions, although the trial court’s opinions were

clearly conclusory regarding the nature of the father's threat to the child's best interest" (2003, p.33).

There have been at least two documented cases where parents did not have parental rights taken away solely on the basis of their disability. In *Moye v. Moye*, the mother appealed to the Idaho appellate court that the decision to remove the child from her custody overemphasized her disability. The same was argued in *Re Marriage of Carney* (Kirshbaum et al., 2003). Though both times parents had custody reinstated, "the court did not discuss the need to establish a nexus between the parent's disability and his or her parenting capacity" (Kirshbaum et al., 2003, p.33). In *Carney*, the disability in question was physical thus supporting the claim that physical disabilities are less discriminated than mental or developmental disabilities.

Other Factors Permitting Discrimination

Kirshbaum et al.(2003) also discussed other factors that permit the discrimination against parents with disabilities in the court room. Though the American Psychological Association has published *Guidelines for Child Custody Evaluations in Divorce Proceedings* which states that evaluators should "be aware of personal and societal biases and engage in nondiscriminatory practice", the APA guidelines are not mandatory by law and can be easily dismissed (cited by Kirshbaum et al, 2003, p.30). Another factor is that it is extremely difficult to find attorneys with knowledge regarding disabilities and the law. Kirshbaum et al.(2003) cited an example of a father with paraplegia who on the day of custody was still without an attorney that had experience with people with disabilities. Many parents with disabilities rely on the help of public funding and it is even rarer to find an experienced attorney in legal service agencies.

The other main problem is related to the stigma associated with being disabled. As Kirshbaum et al (2003) stated “cases often reflect underlying personal assumptions that it is not in a child’s best interest to have a parent with a disability”(p.38). This is especially seen against people with developmental disabilities. As they may rely heavily on social services and other community workers to help with day by day chores or to just vouch for their capability, there is an automatic assumption that they are unable to parent.

Discussion

In 1977, Burgdorf and Burgdorf published an article entitled “The Wicked Witch is Almost Dead” (cited by Pfeiffer, 1994, p. 481). In this article, they exclaimed, “Fifty years of Buck v. Bell is enough” (cited by Pfeiffer, 1994, p.481). As we approach the eightieth anniversary of Holmes’ infamous decision, it has yet to be overturned. In addition, discrimination against people with developmental disabilities has not ended. Despite the passing of recent laws such as Americans with Disabilities Act and Individuals with Disabilities Education Act the law continues to ignore the issues of parenting, marriage and sexuality with regards to people with mental retardation. While we can see promise in decisions such a *Moye v. Moye*, no court in any state has set a precedent to prevent discrimination against disability in rulings regarding custody.

The stigma created over one hundred years ago by a science long determined invalid is still present. It is doubtful that Justice Oliver Wendell Holmes truly understood the gravity of the decision he was making almost eighty years ago. Though he felt that Carrie Buck deserved to be sterilized, was he really saying that any person with a disability was unable to parent? Even if he was not, this is the stigma he and others involved with eugenics created. As a society, we have come a long way in treatment and

education of people with disabilities. In the right programs, persons with developmental disabilities that would have been sentenced to the Virginia Colony years ago can live on their own and hold jobs. Is it right for us to decide that they can not parent because of an IQ score or an impairment that is not of their own doing? It will be interesting to see what will happen over the next eighty years. We can only hope that the inherent rights of persons with disabilities to procreate and parent will be respected not just by society, but by the law as well.

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