

Virginia Forced-Sterilization Case Is Still Law, Eighty Years Later

Three Generations, No Imbeciles: Eugenics, the Supreme Court and Buck v. Bell, by Paul A. Lombardo. 365 pp., illustrated. Baltimore, Johns Hopkins University Press, 2008. \$29.95. ISBN 978-0-8018-9010-9.



Paul A. Lombardo

Reviewed by Robert T. Adams

IN A VERY READABLE 279 PAGES, Paul A. Lombardo sets forth the facts about the eugenics movement in the United States and, more specifically, in Virginia. *Buck v. Bell*, the 1927 United States Supreme Court case based upon Virginia's involuntary sterilization statute, sanctioned decades of state-sponsored efforts to "improve" the human species by using the most oppressive means short of Nazi Germany's Final Solution. While most attorneys are aware of Justice Oliver Wendell Holmes's famous statement, "Three generations of imbeciles are enough," they may not know that *Buck v. Bell* has never been directly reversed and, arguably, has not even been impliedly reversed. Thus, Professor Lombardo's work engenders troubling questions for us today.

While *Three Generations, No Imbeciles* is mostly a factual history, Lombardo points out that current members of the U.S. Supreme Court, as well as some unsuccessful nominees, have questioned the constitutional correctness of subsequent opinions of the Court, such as *Skinner v. Oklahoma* and *Roe v. Wade*, which seem to erode the reach of *Buck v. Bell*. Should those cases be reversed, could this 1927 precedent that was the legal foundation for a horrendous foray into a brave new world provide a basis in the twenty-first century for some equally intrusive exercise of the state's police power? An eerie question.

Perhaps the single most interesting chapter in the book is the synopsis of the trial in circuit court which became the basis for the Supreme Court's decision. Chillingly, it illustrates how a well-drafted law can be perverted by those

who administer it because they are not individuals of good conscience and have agendas of their own. Every law student, lawyer, and judge should read this chapter to see how badly power can be abused by even the most distinguished members of our society.

The one question not fully explored in *Three Generations, No Imbeciles* is how so many intelligent, well-respected community, state, and national leaders came to support the eugenics movement. Eugenics was enthusiastically embraced by the "best" people, including U.S. presidents, wealthy philanthropists, scientists, and, ultimately, the justices of the Supreme Court. Sadly, Lombardo never directly addresses this question. America in the early twentieth century was unlike America today in a host of attitudes, social issues, rights, and technology and science. It would have added to the book if Lombardo had deoted more time to describe life in 1927, lest we view the eugenics movement only through the contact lenses of today, rather than the thick bifocals of days long ago.

From time to time, Lombardo comes tantalizingly close to describing some of the key players in *Buck v. Bell*, such as Dr. Joseph S. "Sterilization" DeJarnette, as monsters. But he wisely refrains, because not only were they then well-respected professionals but they were also aligned with the thinking of a majority of Americans, both distinguished and undistinguished. However, he does an excellent job of pointing out the foibles of some of these crusaders, some of whom could have been targeted for sterilization themselves had they been born in less fortunate circum-

stances. More importantly, he describes the deliberation and zeal with which these eugenicists effectively oppressed and terrorized a group of citizens whose principal problem was that they were poor rather than being mentally retarded ("feble-minded," in the parlance of that day).

Aside from two chapters that focused on developments in Germany, which could have easily been omitted, *Three Generations, No Imbeciles* is a good read. It documents mistakes that should make each of us chary today as we continue to strive for improvement of the human race.

For eugenics is still with us; we call it genetic counseling and gene therapy. Therefore, we should seriously consider whether *Buck v. Bell* can be dusted off and used to effectuate some new effort at improving the human species. *Three Generations, No Imbeciles* shows us that may not be so far-fetched as it sounds

Editor's note: Paul A. Lombardo, author of Three Generations, No Imbeciles, was on the faculty of the University of Virginia School of Law for sixteen years. He directed the Center for Mental Health Law at U.Va.'s Institute of Law, Psychiatry and Public Policy and the university's Program in Law and Medicine at the Center for Biomedical Ethics. He now is a professor of law in the Center for Law, Health and Society at George State University. He is a member of the Virginia State Bar.