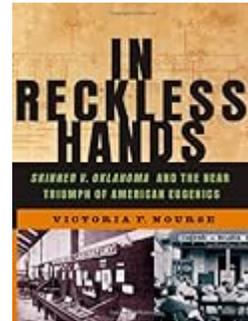


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Paul A. Lombardo. *Three Generations, No Imbeciles: Eugenics, the Supreme Court, and Buck v. Bell.* Baltimore: Johns Hopkins University Press, 2008. Photographs. xiv + 365 pp. \$29.95 (cloth), ISBN 978-0-8018-9010-9.

Victoria F. Nourse. *In Reckless Hands: Skinner v. Oklahoma and the Near-Triumph of American Eugenics.* New York: W. W. Norton, 2008. 240 pp. \$24.95 (cloth), ISBN 978-0-393-06529-9.



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Commissioned by Christopher R. Waldrep (San Francisco State University)

Intellectual Seduction: The Promise and Perils of Eugenics

In the first half of the twentieth century, a right to control one's own body did not exist in the same sense that we take rather for granted today. The state enjoyed broad powers to infringe on individual rights in the name of protecting the public's health and safety. While this application of the state's police powers has a very long history in law, at the turn of the twentieth century changing medical understandings of the etiology of contagious diseases inspired new confidence that law could be employed in the service of preventing deadly epidemics, such as smallpox and diphtheria. In 1905, the U.S. Supreme Court ruled in *Jacobson v. Massachusetts* that states can require individuals to be vaccinated, thereby establishing a crucial precedent for public health law and policy. It was within this context that eugenics, a pseudo-scientific movement advocating social control over human reproduction, took root and thrived. "Eugenics" is

an umbrella term that covers a wide range of ideas, policies, and programs, within which varying weights were assigned to the relative influences of nature and nurture. Some eugenicists, analogizing from the germ theory of disease, argued that the United States faced an extreme risk of degeneracy due to the unchecked breeding of the physically, mentally, and morally unfit whose defective germ plasm threatened to undermine the health and welfare of future generations. Such fears were translated into state laws, founded on the *Jacobson* precedent, that mandated the sexual sterilization of the reproductively unworthy, with or without their consent—and often without their knowledge. In 1907, Indiana became the first state to mandate sterilization; by 1940, thirty states had enacted laws aimed at preventing criminals and the mentally "defective" from procreating. Legal challenges resulted in two landmark Supreme Court cases, *Buck v. Bell*

(1927) and *Skinner v. Oklahoma* (1942). Both opinions remain well known and, for differing reasons, controversial today. Given the contemporary resurgence of scientific and popular interest in genetic explanations for a range of physical ailments and human behavior, both rulings are highly relevant as well. It is therefore most fortunate that two excellent and engaging books have arrived bringing renewed attention to these cases.

Paul A. Lombardo's previous work has established him as the leading authority on *Buck v. Bell* and his first book-length treatment of this notorious case provides its most thorough examination to date. The narrative is divided into eighteen rather short chapters, a somewhat unusual structure that enables Lombardo to embed each step in the case's development within the larger context of American eugenics, allowing us to see how the case both reflected and shaped the movement. Eugenicians, many of whom were associated with the Eugenics Record Office in Cold Springs Harbor, New York, exercised a profound and disturbing influence on law and social policy, including drafting a model compulsory sterilization law and then vigorously campaigning to have it replicated in the states. While much of this material will not be new to historians, Carrie Buck's story becomes even more compelling steeped in the rich detail that Lombardo provides. Buck was an extremely poor, barely educated, seventeen-year-old rape victim, who in 1920s Virginia became a pawn of a blatantly self-serving cast of incredibly shady characters. Mandatory sterilization laws had met with mixed success in state courts, and therefore in Virginia a small circle of eugenicist lawmakers, doctors, and institutional directors conspired to write and enact a statute and then manufacture a test case to gain a judicial stamp of approval for their own project. Lombardo vividly presents the patently absurd case concocted purporting to show that Buck was both feeble-minded herself and the daughter and mother of feeble-minded females, rendering her a genetic threat to the population and a fit subject for the operation. (Her younger sister was also sterilized.) Buck's lawyer, himself a major crusader in Virginia's sterilization campaign, violated every norm of legal ethics in deliberately failing his client at each step in the case, leaving Buck quite literally defenseless (p. 155). Here, readers may be disappointed that Lombardo notes, but does not fully consider, the meaning and consequences of Buck's status as an impoverished white female in the South of the 1920s.

Compulsory sterilization had its detractors, including scientists who argued that eugenicists's assumptions about how genetic inheritance actually worked were fun-

damentally flawed, as well as some Roman Catholics who objected to any artificial interference in human reproduction. But, Lombardo argues, much of the debate over sexual sterilization took place among dueling experts, while the general public maintained steady support for such laws, particularly when they were advanced as a means to spare taxpayers the burden of supporting the unfit in public institutions. Further, recent advances in surgery had enabled eugenicists to argue that sexual sterilization procedures involved only minor physical inconveniences to the patient, analogous to undergoing a vaccination. This claim, although medically dubious, was reflected in Justice Oliver Wendell Holmes's assertion that the law compelling Buck's salpingectomy (removal of the fallopian tubes) violated no constitutional rights but rather merely demanded lesser sacrifices by the unfit on behalf of society's greater good. Lombardo examines Holmes's notorious, rhetorically jarring opinion avidly supporting states's power to compel sterilization. The book then analyzes the ruling's influence in subsequent decades. After a chilling look at the collaboration between some American eugenicists and their counterparts in Nazi Germany, Lombardo discusses subsequent manifestations of state regulation of human reproduction in the United States, which continued well after World War II. The book's last chapter is a moving account of Buck at the end of her life, when the author met and briefly interviewed her. An epilog reconsiders the case in light of current nature-versus-nurture debates engendered by new biotechnologies and the Human Genome Project. Useful appendices provide the full text of the *Buck v. Bell* opinion, the text of the 1924 Virginia Eugenic Sterilization Act, and an interesting table listing state sterilization laws and the number of operations performed under them.

Victoria F. Nourse places economic and social inequality at the center of her examination of *Skinner v. Oklahoma*. While Justice William O. Douglas's opinion today is remembered (and decried) primarily for its assertion that human reproduction is a fundamental human right, Nourse asserts that the case was neither argued nor decided as a case about rights (p. 165). Rather, the Supreme Court struck down the Oklahoma law requiring sterilization for those found guilty of committing particular crimes, because it violated, in both spirit and practice, the essential American fight to end blood aristocracy—a principle at the heart of both the American Revolution and the Civil War. Eugenics, Nourse argues, was simply an attempt to reassert blood aristocracy under the veneer of science. In a lively and compelling account, Nourse

invokes the world of Jack Skinner and the inmates of MacAlester Prison in Depression-era Oklahoma. Sterilizing criminals enjoyed widespread support from a public that feared rampant lawlessness and violence in the bleak years of the 1930s. But it was precisely this aspect of Oklahoma's 1935 statute—that it could not be defended as a public health measure—that proved its eventual undoing. Unlike the defenseless Buck, the MacAlester inmates fought back, writing essays for the local paper and staging violent riots and two bloody prison breaks. They had an invaluable ally in Claud Briggs, a self-made lawyer who as a state legislator skillfully negotiated language in the sterilization bill that softened it for a future court challenge—a challenge that he himself made in the courts by serving as Skinner's counsel.

Nourse also situates the story of *Skinner v. Oklahoma* within the history of eugenics, which she aptly deems an "almost irresistible intellectual seduction" (p. 13). But Nourse's discussion of the eugenics movement is less sweeping than Lombardo's, leaving room for a more thorough exploration of issues of class, race, and gender, all of which are essential elements in the story she tells. Prisoners associated sterilization with castration and therefore they fought the law out of fears for their manhood, a very legitimate anxiety given the prison environment where younger and weaker men were routinely raped and forced to inhabit a permanent, inferior status. "A girl convict who forgot his place," Nourse

points out, "could find himself beaten or even killed, simply for drinking out of the boys' water barrel" (p. 59). Prison officials regularly punished inmates by forcing them to wear women's clothing. Nourse does not fully explore the meaning and consequences of naturalized female inferiority in eugenical thought. She does, however, carefully consider race, arguing that it was intrinsically woven into eugenic conceptions of "superior" and "inferior" as eugenicists sought to naturalize social inequalities by embedding them in the physical body. Recognizing this danger, Justice Douglas's opinion rejected the Oklahoma law as singling out of some crimes but not others as punishable by sterilization, an arbitrariness as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment" (p. 170). Like Lombardo, Nourse also addresses the ties between American and German eugenics as well as the relevance of *Skinner* to current social policy debates in which science and politics are messily entangled. A very minor note is that the book's first page is designated numerically as 13 rather than 1, which made me wonder if additional material was somehow omitted when the book went to press.

Each of these fine books will inform and enlighten legal scholars as well as historians of medicine, science, and American social history in the twentieth century. Readers will be both intrigued and disturbed by what they encounter in the riveting stories of Buck and Skinner.

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