

Constitutional Law - Equal Protection of the Laws - The Constitutionality of Sterilization Statutes

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CONSTITUTIONALITY OF STERILIZATION STATUTES

Whether the year 1927 marks the turning point away from the preservation of the natural rights and the constitutional protection of those rights to the citizens of the United States is perhaps still a problem for future historians to determine. In that year Mr. Justice Holmes of the United States Supreme Court decided that a Virginia statute¹ providing for the sexual sterilization of inmates of institutions supported by the State who should be found afflicted with a hereditary form of insanity or imbecility was valid and was not open to the attack that it denied such inmates the equal protection of the laws guaranteed by the 14th Amendment since "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" and "so far as the operations enable those who otherwise must be kept confined to be returned to the world, and thus open the asylum to others, the equality aimed at will be more nearly reached."²

Again in 1942 the United States Supreme Court found occasion to determine the validity of a state law³ which provided for the sterilization of habitual criminals, i.e., persons convicted two or more times for crimes amounting to felonies involving moral turpitude, save "offenses arising out of the violation of the prohibitory laws, revenue acts, embezzlement, or political offenses." Though the court found the statute unconstitutional inasmuch as "sterilization of those who have thrice committed grand larceny with immunity for those who are embezzlers is a clear, pointed, unmistakable discrimination" because the two crimes are distinguishable only "with reference to the time when the fraudulent intent to convert the property to the taker's own use" arises, the court did cite *Buck v. Bell* as precedent for upholding such a legislative enactment where proper equality in application is achieved.⁴

Accordingly under the decision in *Buck v. Bell*⁵ and *Skinner v. State of Oklahoma*⁶ we may properly conclude that any statute permitting sterilization of mental defectives or habitual criminals will be upheld as constitutional and not violative of the equal protection clause of the 14th Amendment provided that no discriminatory classification is effected as to those within the natural class designated as proper subjects for its application. Sterilization laws can no longer be attack as constituting a denial of equal protection unless discrimination is present.

¹ Acts 1924, c. 394, p. 569.

² *Buck v. Bell*, 274 U.S. 200, 47 Sup. Ct. 574, 71 L.Ed. 1000 (1927).

³ Okla. St. Ann. Tit. 57, 171 et seq.; L. 1935, p. 94 et seq.

⁴ *Skinner v. State of Oklahoma ex rel. Williamson*, Atty. Gen. of Oklahoma, 62 Sup. Ct. 1110, _____ U.S. _____ (1942).

⁵ *Supra*.

⁶ *Supra*.

State courts are bound in principal by the decisions of the supreme tribunal of the land when it has spoken upon that for which it is constituted to decide, and are therefore controlled by its decisions in determining whether a statute before it violates the equal protection clause of the 14th Amendment to the Constitution of the United States.⁷

Unfortunately most courts in determining whether such enactments are valid have utterly neglected to inquire whether the state can proceed to deny one of his natural right to bodily integrity by means of sterilization. In *Buck v. Bell*⁸ it was said, "The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes." But the principle sustaining compulsory vaccination is confined to the rule that a state may limit personal freedom in any reasonable manner for the protection or promotion of public health.⁹ Though it is true that sterilization may promote public health insofar as it will, in theory at least, rid society of the birth of mental unfortunates of eugenic origin, the solution cannot be designated reasonable, unless we are to concede that the state has a right to mutilate innocent subjects and consequently concede that man exists only for the good of the State. Certainly if man exists but for that purpose there can be no rational basis in the enactment of laws to secure to him the due process of law when called upon to render account to the State but the presence of an empty Constitutional provision. The entire framework of our constitutional system must of necessity collapse as must any government which proceeds upon a materialistic conception of man.

Perhaps it was the foresight of things to come that prompted at least one court to state its attitude upon the inherent dangers of laws allowing sterilization of unfits when it said in extenso, "While the case raises the very important and novel question whether it is one of the attributes of government to essay the theoretical improvement of society by destroying the function of procreation in certain of its members who are not malefactors against its laws, it is evident that the decision of that question carries with it certain logical consequents having far-reaching results. For the feeble-minded and epileptics are not the only persons in the community whose elimination as undesirable citizens would, or might in the judgment of the legislature, be a distinct benefit to society. If the enforced sterility of this class be a legitimate exercise of governmental power, a wide field of legislative activity and duty is thrown open to which it would be difficult to assign a legal limit.

"If in the present case we decide that such a power exists in the case of epileptics, the doctrine we shall have enunciated cannot stop there.

⁷ *Davis v. Walton*, 74 Utah 80, 276 Pac. 921 (1929).

⁸ *Supra*.

⁹ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 Sup. Ct. 358, 49 L.Ed. 643, 3 Ann. Cas. 765 (1905).

For epilepsy is not the only disease by which the welfare of society at large is injuriously affected, indeed, it lacks some of the gravest dangers that attend upon such diseases as pulmonary consumption and communicable syphilis. So that it would seem to be a logical necessity that, if the legislature may under the police power theoretically benefit the next generation by the sterilization of the epileptics of this, it both may and should pursue the like course with respect to the other diseases mentioned with the additional gain to society thereby arising for the protection of the present generation from contagion and contamination. Even when these and many other diseases that might be named have been included, the limits of logical necessity have by no means been reached.

"There are other things besides physical and mental diseases that may render persons undesirable citizens or might do so in the opinion of a majority of a prevailing legislature. Racial differences for instance, might afford a basis for such an opinion in communities where that question is unfortunately a permanent and paramount issue. Even beyond all such considerations it might be logically consistent to bring the philosophic theory of Malthus (sic) to bear upon the police power, to the end that the tendency of population to outgrow its means of subsistence should be counteracted by surgical interference of the sort we are now considering."¹⁰ The Skinner case likewise noted the dangers of allowing such laws to become tools for purposes of oppression but went no further than to state that such possible abuse gave greater cause for careful scrutiny in determining whether actual discrimination was present.¹¹

Without resort to judicial opinion it should be clear to reasonable men who retain that proper respect for human dignity and personal independence as is necessary for the preservation of a well ordered society that eugenic sterilization of mental incompetents and criminals is a direct attack by the state upon an absolute right of the individual, namely, the right to his faculties. Though imbeciles and hopelessly diseased have no right to procreation, the public authority is doing wrong in destroying their procreative faculty for the right to the faculty itself is absolute. The right of the state to rid itself of individuals who are a standing danger, morally or physically, to the community cannot be extended beyond the power of segregation. Economic considerations cannot be tolerated unless the traditions and philosophy from which

¹⁰ *Smith v. Bd. of Examiners of Feeble-Minded*, 85 N.J.L. 46, 88 Atl. 963 (1913).

¹¹ *Supra*.

the Founding Fathers drew for inspiration in formulating that cherished document known as our Constitution are cast aside.¹²

Even conceding that the state had the requisite authority to sterilize a human being for eugenic reasons the avowed purpose of sterilization laws would still remain unaccomplished. Society would not be benefited by turning loose degenerates after sterilization. Indeed, it would be an inducement for certain degenerates to commit their crimes with an added sense of security. Where one is guilty of repeated criminal acts he has no place in a societal union. Segregation under supervision of competent authorities is the only proper remedy, and if so confined there is no cause for fear that more of his kind will be propagated (if it be true that criminals procreate criminals), and removal of many dangers to society arising from the freedom of the unfit is realized. Segregation is the only rightful way of preventing the use of the procreative faculty of the weak-minded and criminals.

In *Buck v. Bell*¹³ it was said, "It is better for all 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." Indeed! Upon what theory of law or morality can it be said the state possesses the power to execute an irresponsible person for even the most heinous crime? Has the meting of punitive measures sunk to such depths as to execute one who has come into the world without possession of his natural reason? And if it is sought to sterilize to prevent offspring who will starve for their imbecility what reason is there to make barren the imbeciles of the rich? Definitely, the answer to such rationalization can be but one—economic considerations. Under such theories human law and morality become conflicting norms of action and human individuality must surrender to the might of the State. How inconsistent with present ideals!

ROBERT SCHEFFER.

¹² Declaration of Independence, July 4, 1776. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness—That to secure there rights, Governments are instituted among men . . ."

¹³ *Supra*.