

RHETORICAL ANALYSIS ONE
“Manifestly Unfit”

In his delivery of the U.S. Supreme Court’s majority decision on the *Buck v. Bell* (1927) case, Justice Oliver Wendell Holmes, Jr. asserts his power to argue in favor of eugenics and against personal liberties. Justice Holmes structures his argument in such a way that it appears to be based in logical reasoning. However, Holmes establishes his authority, employs greatly inflated language, and uses emotion rather than logic to persuade. As one modern critic of the *Buck v. Bell* decision stated, this farce of forensic discourse “could represent the highest ratio of injustices per word ever signed” by a vast majority of Supreme Court Justices (*Imbeciles* 267).

THE RHETOR

Justice Holmes remains one of the most well-known justices from the U.S. Supreme Court. Holmes graduated from Harvard Law in 1866, practiced law, and returned to Harvard as a professor in 1882 until he was appointed to the Supreme Court of Massachusetts, where Holmes ultimately served as chief justice. Eighteen years later in 1901, then-President of the United States, Theodore Roosevelt, appointed Holmes as a justice of the U.S. Supreme Court. Holmes’ written opinions in favor of the freedom of speech and dissents against judicial regulation of the economy were influential in their time and he remains well-cited today (White). In fact, Holmes coined the aphorism “falsely shouting fire in a theatre,” which expresses the limitations of constitutionally protected speech (213, 243).

Notably, throughout his legal career Holmes tended heavily towards judicial restraint; he wrote extensively against “judicial activism” where judges endeavor to select the decision that’s

in society's best interest (*Imbeciles* 230). Yet in his writing for the U.S. Supreme Court's decision in the *Buck v. Bell* case, Holmes is excessively entangled in promoting the welfare of society when he concludes: "It is better for all the world if...society can prevent those who are manifestly unfit from continuing their kind," (*Buck v. Bell*).

THE RHETORICAL SITUATION

Cases are heard at the local- and state-level circuit courts and can be re-assessed for accuracy by the state's supreme court of appeals. Following the appellate court's decision, further appeals can be made to the U.S. Supreme Court at the Court's liberty. In *Buck v. Bell* (1927), the Virginia Supreme Court of Appeals had previously affirmed the local Circuit Court's decision to allow the forcible sterilization of Ms. Carrie Elizabeth Buck, an inmate of the Virginia State Colony for Epileptics and Feeble Minded, a mental institution (*Imbeciles* 17). The state of Virginia approved of a legal statute in 1924 permitting the sterilization of "feeble minded" people in institutions like the Colony to restrict their procreation and, thus, the propagation of such undesirable traits (*Buck v. Bell*).

Ms. Buck and her lawyer appealed to the highest judicial authority in the United States, the U.S. Supreme Court. They sought a judicial review of Ms. Buck's case—called a "writ of error"—arguing that the previous courts' decisions were void under the 14th Amendment of the Constitution which affords due process of law and equal protection of the law to all U.S. citizens. The now-defendant lawyer Mr. Aubrey Strode argued that state governments did have the right to arbitrate eugenic sterilization under their "police power" (*Imbeciles* 257).¹

¹ See this source for additional information regarding the lengthy argument Strode presented against Ms. Buck.

The exigence of this text is to announce the U.S. Supreme Court's decision on *Buck v. Bell*. This text serves as forensic discourse, outlining the Court's assessment of the case. The rhetor, Justice Holmes is the first persona, writing with the authority of a U.S. Supreme Court Justice. Only other Supreme Court Justices have the authority to directly change laws, as the rhetorical audience. The general audience and second persona to this text are the plaintiff, Ms. Buck, and the lower courts. The sentiments of and rhetorical responses from the American public shapes popular opinion, and ultimately influences future Supreme Court nominations. The third persona, almost entirely negated through Holmes' language, are the so-called "feeble minded" and disabled members of society.

THE RHETORICAL ANALYSIS

This 1927 Supreme Court decision serves as a performance of legal action that reflects the contemporary opinion regarding disability; however, some detail and meaning is lost for readers in the twenty-first century, because they are restricted to reading the decision removed from the social reality of that time. Holmes appears to be conforming to the genre of legal writing for a typical Supreme Court decision in his decision for the *Buck v. Bell* case. Despite this appearance, I will demonstrate how Holmes' supposedly logic-based argument is, in fact, an emotionally charged effort to promote eugenic sterilization.

ESTABLISHING AUTHORITY

As briefly described in the introduction of this paper, Justice Holmes had a formidable reputation and was highly respected by his fellow Supreme Court Justices, despite their differing opinions on the role of the law. When Holmes picked up his pen to craft this decision, he was entitled to immense socially recognized authority. That authority empowered Holmes with rhetorical agency, the ability to make claims which will be accepted by his community. Though

contemporary research was moving away from eugenics (*Imbeciles* 2, 252-3), the Supreme Court evidently accepted Holmes' claims—the case ended in an 8-1 majority decision to uphold Virginia's constitutional authority to require forcible sterilization for institutionalized people like Ms. Buck.

Using his rhetorical agency, Holmes engages in contextual reconstruction of this case: *Buck v. Bell* is not truly about state's rights or an individual's liberties but rather is a matter of urgent concern for societal wellbeing. As mentioned on page one of this paper, Justice Holmes typically supported judicial deference to legislature. Yet in his written decision for this case, Holmes restated—and wholeheartedly accepted—the 1924 Act of Virginia that granted institution superintendents the right to have “feeble minded” patients “sexually sterilized” for the perceived “benefit of themselves and to society” (*Buck v. Bell*, paragraph 3). The entire purpose of the appeal to the U.S. Supreme Court was to gain an additional assessment of the constitutionality of the previous courts' decisions. Strode, the now-defense lawyer, at least acknowledged the 14th Amendment claim of Ms. Buck's appeal in his retort. Holmes, in contrast, provided minimal introductory information regarding the context of the case (paragraph 1), incorrectly stated significant terms (paragraph 2), and spent the remaining paragraphs defending the Act of Virginia.² An unaware reader could read the second half of this text as a persuasive essay on the merits of eugenic sterilization. Holmes, along with the U.S. Supreme Court, fail their primary purpose in this case, which is to assess the constitutionality of the Act of Virginia.

² “*incorrectly states significant terms*” = The U.S. department of commerce distinguished between three level of mental defect, from most- to least-functional: (1) “moron,” (2) “imbecile,” and (3) “idiot” (*Imbecile* 270). These terms were specific and meaningful, and it's remarkable that Holmes wasn't questioned for conflating and downgrading them considering their significance to this case.

INFLATING LANGUAGE

Holmes constructed a significant part of his persona's authority through strategic essentialism: he drew a sharp divide between "us" (the "average" members of society) and "them" (the "feeble minded"), and explicitly identified with the "us" category. This further legitimizes his own rhetorical agency, and reduces that of mentally challenged like Ms. Buck, the invisible third persona.

Often when a rhetor employs strategic essentialism, he emphasizes the most positive aspects of his persona's identity. Perhaps because the context and conventions of legal writing suggest much of this information already, Holmes makes the rhetorical decision to instead cast a negative light on the "other" group. Through this identification of the "feeble minded" population, Holmes indirectly characterizes himself as one of the "best citizens," not one that "already sap[s] the strength of the State" (*Buck v. Bell*).

The most notable way in which Holmes characterized the "other" group—of which Ms. Buck was a member—was the Justice's inflated language in reference to them. He called people who lived in institutions like the Virginia State Colony for Epileptics and Feeble Minded "patients" and "inmates" four times and six times, respectively. "Feeble minded," used three times by Holmes, was the societally appropriate term for people with a mental handicap during the early twentieth century (hence, the name of the institution where Ms. Buck resided).

At the time, "insanity" and "imbecility" were equated with criminality (*Buck v. Bell*). This association was repeated by Holmes more than three times, where he cites the Act of Virginia in stating that "heredity plays an important part in the transmission of such disorders" (*Buck v. Bell*). Research on the heritability of disabilities was, and remains, a convoluted subject. While many such traits are congenital, scientists still are unable to predict with certainty

that a disabled person's offspring will also have that disability. Furthermore, disabilities manifest themselves in a range of severity; even at the time, there was a "growing skepticism" from scientists who had formerly championed the eugenics movement (*Imbeciles* 269).

He further degrades the value of disabled people by explicitly calling them "defective persons...who would become a menace" to society, and whose offspring would be "socially inadequate" "degenerates."

Overall, Holmes thought and spoke of disabled people as "other." He never used the phrase "people with feeble mindedness" or another form of people-first language which is essential today. Instead, Holmes seems to believe that his societal authority gives him the platform from which to declare certain people worthy of autonomy and procreation and other people "manifestly"—meaning undoubtedly, obvious even to the naked eye—"unfit from continuing *their kind*" (*Buck v. Bell*, emphasis added).

NEGLECTING LOGIC

The argument Holmes presents in the Supreme Court decision for the *Buck v. Bell* case neatly follows that which the now-defense, Strode, presented before the Court. First, Holmes states as fact that science has proven that "insanity, imbecility," et cetera are solely transmitted genetically from one generation to their offspring (*Buck v. Bell*). As noted previously, however, even scientists who had strongly supported the eugenics movement were backing down from their claims by the mid-1920s. Holmes unquestioned use of this argument is shocking, then, considering that most scholars would not have agreed. Secondly, Holmes contended that purely because of their genetics, the offspring of "feeble minded" people would commit greater and more dangerous crimes than the rest of the population, resulting almost certainly in execution (*Buck v. Bell*). Thirdly, because of this danger, disabled people were to a "menace" society so

long as they were allowed autonomy. Holmes' fourth point offered the solution to this threat: in lieu of institutionalizing every single "defective" person, the answer was to surgically prohibit their reproduction. Once the threat of "swamp[ing society] with incompetence" was eliminated, these disabled people could be "discharged with safety and become self-supporting" which would benefit themselves and society (*Buck v. Bell*).

This argument perhaps makes sense, if you take each assumption and generalization Holmes uses exclusively as fact. However, popular opinion at the time and then-contemporary science would disagree with Justice Holmes' evidence and logic. The rhetor attempts to use *logos* to appeal to the values of the average American in 1927. Holmes uses as fact dubious statements which a layperson would struggle to refute.

THE IMPLICATIONS

Justice Holmes delivered the Court's majority decision in the 1927 *Buck v. Bell* case. Though Holmes attempted to shape his argument in a persuasive, logical manner, his inflated language and use of emotion rather than true logic caused him to fail at this task. It's unfortunate to see laws created for people who have no rhetorical agency. Particularly when the highest judicial authority in the nation questions their personhood and refers to widespread pseudo-medical mutilation as "lesser sacrifices" (*Buck v. Bell*).

BIBLIOGRAPHY

"Buck v. Bell." *Oyez*, 22 Feb. 2018. <www.oyez.org/cases/1900-1940/274us200>

Cohen, Adam. *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck*. Penguin Press, New York, 2016.

White, G. Edward. "Holmes, Oliver Wendell, Jr.." The Oxford Companion to United States History. : Oxford University Press, 2001. Oxford Reference. 2004. Date Accessed 1 Feb. 2018. <<http://www.oxfordreference.com/view/10.1093/acref/9780195082098.001.0001/acref-9780195082098-e-0704>>.