American Progressivism: Supreme Court of the United States and the legitimization of eugenic practices

Introductory remarks

According to George W. Ruiz „Americans have always had a strong psychological attachment to the idea of Progress, although they have differed at times as to the precise meaning of the word”¹. In the late 19th and early 20th centuries, American progressive movements tried to match American ideals with the challenges of the times. After the period of Reconstruction (1865–1877), the United States underwent transformation in social, economic, and legal planes. In the view of Robert H. Wiebe, it was the time of ‘the search for order’². Progressivists have never created any recognizable organization with common goals. Progressivism reflected a growing consensus among Americans that the changes in the late 19th century had produced imbalances in society. It had many followers across the country. The movement began to be supplemented by several different movements in the 1920s. It can be said that there even were „many progressive movements on many levels seeking sometimes contradictory objectives”³. It is significant that the activities of the Supreme Court of the United States during the Progressive Era have been diversely depicted and clarified in the American literature in the 20th and 21st centuries⁴.

American Progressive Era has been the subject of research of diverse academic disciplines. American subject-related literature is impressive as

³ A.S. Link, What happened to the progressive movement in the 1920s?, „The American Historical Review” 1959, Vol. 64, No. 4, p. 836.
extensive is the phenomenon. It should be taken into consideration that the representatives of contemporary scholarship, e.g. Rebecca Edwards, Shelton Stromququist, or Maureen A. Flanagan present a different assessment of the events than the authors of older publication, e.g. Robert H. Wiebe, Richard Hofstadter, or William E. Leuchtenburg\textsuperscript{5}. The history of eugenics in the United States from its emergence in the late 19th century has been examined by, e.g. Thomas C. Leonard, Nancy Ordover, Paul Lombardo, Gregory Michael Dorr, or Michael Yudell.

The purpose of the article is to present the activities of the Supreme Court of the U.S. in the context of the progressive reforms and ideas advanced during the Progressive Era. Unfortunately, since the modest scope of this article does not allow for an exhaustive treatment of the subject, the present work is contributory in nature. The judgments and opinions of the Supreme Court are not exhaustively reviewed, and only certain controversial cases are selected for closer consideration. Particularly, the ruling in \textit{Buck v. Bell} is taken into more detailed examination. The main questions the present study strives to answer are: Which were the directions of progressive reforms in America? Were the Supreme Court of the U.S. judgments under William Howard Taft in conformity with the ideas of Progressivism? How can we link eugenics and economics in the Progressive Era? How can we assess the involvement of the Supreme Court of the U.S. in eugenic practices?

The work consists of three parts. The development of the Progressive Era is presented in the first part of the article. The second part of the publication is devoted to progressive eugenics ideas. The decisions of the Supreme Court of the U.S. in the context of eugenics practices are taken into closer examination in the third part of the article. In this particular study, the historic-descriptive method of theoretical analysis, and the formal-dogmatic method, precisely - the analysis of legal texts (according to the Polish typology), were applied to address the research questions and to reach some conclusions.

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Progressive Era: the search for order

The Gilded Age began after the demise of Reconstruction and lasted until the end of the 19th century. It was a period of rapid economic growth, particularly in the North and West, and the time of the largest influx of immigrants to America. It is also associated with numerous corruption scandals and the decline in the authority of social and governmental elites. Many problems faced by American society during the Gilded Age gave rise to the expected reforms of the subsequent Progressive Era. The debate concerning the exact contours of the Progressive Era is still present in the scientific discourse. Generally, it is claimed that it lasted either until World War I or to the Great Depression. Historians date the beginning of the Progressive Era as the period around 1900. In the opinion of Rebecca Edwards progressive movements were alive during the last decade of the 19th century because the Progressives were the people who were active in the late 19th century, and who worked to regulate and restrict the extraordinary power of big business, purify politics, reduce poverty and other economic injustices. Progressives reached their height in the early 20th century as a response to vast industrialization, the growth of large corporations, and the fears of corruption in American politics. Large-scale corporate enterprises influenced the fact that manufacturing replaced agriculture as the primary source of national wealth. By 1900, the United States had become the foremost industrial country in the world. Railroads had created a national market for goods, linking small towns to urban centers and farming communities. Private investment capital was essential to finance the spectacular economic boom, farmers were drawn into the market economy.

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7 Cf. R.H. Wiebe, *The search for...*, p. 166. Some argue that the starting point of the Progressive Era was in 1889, when Jane Addams founded Hull House in Chicago.


In agriculture, the period of early 1890s was very difficult because of declining crop prices, drought and an unstable agricultural market. Many farmers could not pay their debts and criticized the new economic realities. The discontent of farmers found expression in the formation of the People’s Party, known as Populist Party, or as Populists, which for a few years (1892–1896) played a major role as a left-wing force in American politics. The activists of the Party rejected the existing political system and the dominance of ‘laissez-fair’ philosophy. The Populist Movement, attributing agricultural distress to concentrated wealth and large corporations, intended to reshape governmental policy to benefit agriculture. Populists were in favor of a graduated income tax, currency policies to benefit debtors and imposing limits on immigration.

Unfortunately, we cannot capture the Progressives within a static ideological frame. The mixed set of values contributed to the Progressive Movement. Progressivism developed in many different versions according to the region of the federal state. Corruption in city and state government was fiercely attacked by the Progressives in the more industrialized and urbanized regions. They fought for public education, responsive governments, safe cities, and against the repression of workers in factories and mines. In the agrarian South, the main goals for Progressives were efforts to curb the exploitation of child labor, to stop railroad monopolies, to develop healthcare, and to increase the access to scarce credit. Women’s suffrage was also promoted by many supporters of Progressivism. The reformers were interested in social and political reform as well as the limitation of political corruption caused by political machinery. They emphasized the need for civil service reform, food safety laws, professionalism and bureaucratization of the previous political system. It is significant that some called for a strong government guided by experts rather than public opinion. As far as foreign policy is concerned, Progressivists did not see any conflict between American inclinations towards colonialism and interventions and progressive ideas. The Progressive Era was the time when American citizens organized themselves in order to confront the actual problems of their

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12 Cf. D.T. Rogers, In search of Progressivism..., p. 123.
13 See more in E. Sokalska, American Progressivism and the issue of women’s rights (some remarks concerning the influence of feminist currents on the American constitutionalism), [in:] M. Eysymontt, C. Lázaro Guíllamón (eds.), Women, society and law: from Roman law to Digital Age, Warsaw 2022, pp. 86–100.
society. The multiplicity of reform campaigns is often emphasized in the American subject related literature.\textsuperscript{15}

Shelton Stromquist is of the opinion that Progressivism departed in significant ways from its classical antecedents – reformers who sought to find a new social balance between conflicting interests. “A new theory and practice of liberalism, in the guise of what contemporaries called ‘progressivism’, gradually took shape out of the shock and disorientation brought on by raging industrialization and the class warfare it precipitated”\textsuperscript{16}. American Progressives anticipated the world in which “class conflict might be alleviated and class differences gradually dissolved into a new civic order”\textsuperscript{17}. In the matter of the fact, they held some “racial views that consigned African Americans and new immigrants to the social margins. However compassionate most reformers were, they believed these racial ‘others’ to be poor candidates for the responsibilities of citizenship”\textsuperscript{18}.

**Eugenics as an instrument of reform?**

In the perception of many Europeans, the term ‘eugenics’ – understood as the selection of desired heritable characteristics in order to improve future generations – in contemporary scientific discourse is largely associated with the criminal experimental eugenics of Nazi Germany. It might be surprising for a modern reader to find a close link between Progressive American reforms and the biology of human inheritance\textsuperscript{19}. It is significant that Progressive Era eugenic ideas were also influential in other countries, e.g., Scandinavian countries\textsuperscript{20},


\textsuperscript{16} S. Stromquist, *Reinventing „The People”*, p. 191.

\textsuperscript{17} Ibidem, p. 192. See also here the article of David P. Thelen who presents origins of the progressive movement focusing on social tensions: *Social tensions and the origins of Progressivism*, „The Journal of American History” 1969, Vol. 56, No. 2, pp. 323–341.

\textsuperscript{18} S. Stromquist, *Reinventing „The People”*, p. 191.


Latin America, Great Britain\textsuperscript{21}. The cradle of American eugenics was the institution of Cold Spring Harbor on Long Island\textsuperscript{22}. In 1910, Charles Davenport established Eugenics Record Office, which was a scientific institute that collected biological and social data referring to American population\textsuperscript{23}. The term of ‘eugenics’ was coined by Francis Galton. He initiated it as a specific area of study with scientific aspirations. ‘Eugenics’ was defined by him as „the study of agencies under social control that may improve or impair the racial qualities of future generations, either physically or mentally”\textsuperscript{24}. During the first wide discussion on eugenics (under the auspices of Social Society, which had just been established at the London School of Economics in 1904), Galton proposed the other delineation of eugenics as „the science which deals with influences that improve the inborn qualities of race; also with those that develop them to the utmost advantage”\textsuperscript{25}. The two definitions had significant impact on the later ideological debates.

Progressive Era eugenic ideas were influential, and eugenics found proponents whose ideologies spanned the entire political spectrum. In the opinion of Shelton Stromquist progressive reformers „believed themselves to be agents of a reviewed national mission to renew democracy and expressed confidence about forging unity of ‘the race’ out diverse ethnic materials”\textsuperscript{26}. Therefore, social engineering was seen as the promise of meeting human needs, cultivating better educated citizens, improving the mechanisms of class reconciliation, and at last perf ecting American democratic institutions\textsuperscript{27}. The American Eugenics Society educated American citizens on the virtue of eugenics, set up instructional pavilions, and staged ‘fitter family’s competitions when state agricultural fairs took place.

It is interesting to consider close relations between American eugenics and economy. Thomas C. Leonard from Princeton University discusses the influ-
ence of progressive eugenic ideas upon American economic reforms. He draws attention to the areas of immigration and labor reform. He argues that American economists aimed at reforms which, "(…) defended exclusionary labor and immigration legislation on the grounds that the labor force should be rid of unfit workers, whom they labeled «parasites», «the unemployable», «low-wage race», and «the industrial residuum»." Based on the assumption that differences in human intelligence, character and temperament are due to differences in heredity, the eugenicists strived to improve human heredity by the social control of human breeding. They advanced the idea that socially undesirable traits were the product of bad heredity. Progressive eugenicists sought to improve the ‘race’ by furthering the productivity of citizens.

It is significant that racism was deeply ingrained in the American society. Therefore, it is not surprising that the eugenics of the Progressive Era appeared to be racist. However, in the Progressive Era, ‘race’ was an imprecise expression and it had different connotations than today. The use of ‘race’ meant nationality or ethnicity. American eugenicists often included women and the lower classes in the category of unfit persons (besides the people regarded as deficient in intellect, criminals, and morally deficient). Professional economists who wrote on immigration underlined not the quantity of immigrants but their quality. The core of the problem of immigration was that Americans would have been overwhelmed by the racially inferior, ‘unfit’ persons.

In the Progressive Era, dislike and fear of immigrants were not new, but immigration restrictions were proposed on racial grounds. Progressives justified immigration restrictions based on race as a remedy for so-called ‘race suicide’. ‘Race suicide’ was a term for the process by which natives (racially


30 It should be taken into consideration that in the late 19th century, massive immigration of Chinese workers took place. On the one hand, there appeared some pressure groups that wanted the U.S. Congress to tighten the law governing immigration. On the other hand, employers needed workers. Chinese immigrants were often unqualified and of poor knowledge of English language. Being exploited by the American enterprise, the immigrants were blamed for depressed wage levels. In connection with Chinese immigration, the Congress introduced Chinese Exclusion Acts starting since 1882. A lot of cases brought before the Supreme Court was the effect of the regulations (so-called Chinese Exclusion Cases in 1884–1893, however, the case of Chae Chan Ping v. United States (1889) is most commonly described as the Chinese Exclusion Case) (130 U.S. 581 (1889)). The mentioned regulations and rulings of the U.S. Supreme Court unfortunately focused on the racist and xenophobic attitudes, and they reflected anti-Chinese sentiment rather than an aspiration for reforms.
superior) were outbred by immigrants (racially inferior). The proponent of the race-suicide theory was Edward A. Rose (a founding member of the American Economic Association). He claimed that although the native workers’ productivity was higher, they would be displaced by immigrants from China who were racially disposed to work for lower wages. Therefore, the legitimization of ‘social control’ was necessary\textsuperscript{31}. It was put forward the opinion that social progress is more important than equality, therefore the vicious and inefficient should be eradicated. Selection of the fittest via eugenic measures was the way to improvement of the American society. Francis Amasa Walker, one of the most respected Progressive economists, included a ‘race suicide’ narrative in the immigration debate. He predicted that without racial immigration restrictions the natural fertility of the native population will be limited. Walker and other economists endorsed eugenic policies. In his opinion „the scientific treatment which is applied to physical diseases must be extended to mental and moral disease, and wholesome surgery and cautery must be enforced by the whole power of the state for good of all”\textsuperscript{32}. Consequently, many American economists developed the ‘race suicide’ theory and eugenic solutions to it. It was the opinion that lower, worse races were biologically predisposed to low wages or living in the worse living conditions. It is interesting to consider that the ‘race suicide’ theory was also popular in England. In order to describe the phenomenon of ‘race suicide’ – ‘adverse selection’ was a new term devised by Sidney Webb\textsuperscript{33}.

\section*{Eugenics and the Supreme Court of the United States jurisprudence}

During the Progressive Era, the Supreme Court of the U.S. had to confront the dynamic reality of changing economy and the problem the respect for constitutional rights. It is significant that some of the distinctive directions of its rulings has remained controversial to the present day. Although the legacy of the Court has been often subjected to sharp criticism, it is reasonable to assume that at the turn of the 19th and 20th century, it restored its position

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\item\textsuperscript{31} T.C. Leonard, \textit{Retrospectives…}, pp. 209, 218.
\item\textsuperscript{32} Ibidem, p. 211.
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in public life. The Supreme Court of the U.S. guided the actions and stabilized tensions of the American judiciary branch.\textsuperscript{34}

\textit{Buck v. Bell} (1927) is the most infamous decision of the Supreme Court of the U.S. under William Howard Taft that might be considered in the context of eugenics solutions, in which the Court affirmed the constitutionality of Virginia's law allowing state-enforced sterilization, and it upheld Virginia's sterilization law. During the Progressive Era, Alabama and Virginia physician put the emphasis on preventive medicine and public health and their congruence with eugenic public policy.\textsuperscript{35} The physician were demanded to „seek the causes of endemic diseases and stamp them out by wise legislation which should acknowledge no right superior to public welfare, no law above self-preservation.”\textsuperscript{36} It is interesting to consider that such an approach manifested a profound shift in the relations between doctors and patients, „diminishing the sick individual’s claim to therapeutic treatment and enlarging the directive, controlling power of the physician as an arbiter of the greater good.”\textsuperscript{37} Native American population became the principal aspect of an „intensive antimiscegenation drive in the name of the white supremacy and eugenic public health that climaxed at the same time as the effort for eugenic sterilization law.”\textsuperscript{38} Therefore, facing the threat of being outbred, ‘superior’ white population in Virginia needed legal defense, namely marriage restriction laws and eugenic sterilization. Virginian eugenicists succeeded, when the state General Assembly enacted marriage restriction laws and eugenic sterilization — Racial Integrity Act passed in March of 1924\textsuperscript{39} and Virginia Sterilization Act of 1924\textsuperscript{40}.

The first law reinforced racial segregation by prohibiting interracial marriage, while the second law initiated institutionalized sterilization of the mentally ill.

The Supreme Court of the U.S. under the tenure of William Howard Taft had to test the validity of Virginian law allowing eugenic sterilization. According to the conviction that heredity plays a significant role in the transfer of insanity, idiocy, imbecility, epilepsy, and crime, Carrie Buck was chosen to test the sterilization law as a resident the Virginia Colony for Epileptics and


\textsuperscript{36} Ibidem, p. 370.

\textsuperscript{37} Ibidem, p. 371.

\textsuperscript{38} Ibidem, p. 376.

\textsuperscript{39} It was overturned in 1967 by the Supreme Court of the U.S. in \textit{Loving v. Virginia}, 388 U.S. 1 (1967).

Feebleminded. Buck stated that the state law violated the Fourteenth Amendment, denying due process of law and equal protection law. In the opinion concerning Carrie Buck, her mother, and her daughter who were all suspected of being feebleminded, Oliver Wendell Holmes, Jr. declared that „three generations of imbeciles are enough”. Holmes made references to *Jacobson v. Massachusetts*\(^{41}\), the precedent case decided in favor of compulsory vaccination in order to prevent society from infection by a sick individual. The rationale of the decision was the right of the society to require sacrifices from its members in the name of common good\(^ {42}\). Justice Holmes upheld the constitutional validity of the law, and „sealed the fate of Carrie Buck, and established the reputation of Carrie, her mother, and her daughter as the »three generations« whose surname is invoked in constitutional law text even today”\(^ {43}\).

In 1942, the Supreme Court of the U.S. in *Skinner v. Oklahoma*\(^ {44}\) involved compulsory sterilization of male habitual criminals. It should be emphasized that the ruling in *Buck v. Bell* set the stage for more than sixty thousand involuntary sterilizations in the United States\(^ {45}\). It remains a potent symbol of governmental control of reproduction and infamous precedent in American judicature.

### Concluding remarks

It should be taken into consideration that American literature approaches the problem of eugenics during the Progressive Era from a wide variety of perspectives. Michael Freeden proposes to depart from oversimplistic identification of eugenics as a political theory with racism or ultraconservatism. Instead, he offers two alternative models of interpretation. On the one hand, eugenics is portrayed as an exploratory avenue of the social reformist tendencies of early 20th century British political thought. On the other hand, it serves as a case study illustrating the complexity and overlapping that characterize most modern ideologies\(^ {46}\).

\(^{41}\) 197 U.S. 11 (1905).

\(^{42}\) Abut the rationale of the verdict see more in Ł. Machaj, op. cit., pp. 423–425.


\(^{44}\) 316 U.S. 535 (1942).

\(^{45}\) P.A. Lombardo, *Three generations..., p. 31.

During the Progressive Era, eugenic approaches to economic and social reforms were popular and widespread. In America, eugenics, hereditarian policy, and social Darwinism were the symptoms of the larger intellectual trend: "the ascent of university-trained expert"\textsuperscript{47}. Eugenic views justified exclusionary immigration legislation. Economists affiliated with the American Association for Labor Legislation advocating labor reforms were under the influence of race-suicide theories\textsuperscript{48}. American eugenics went into decline in the 1930s–1940s. It is significant that the close association of eugenic ideas with the Nazi Germany regime discredited American eugenic policies.

It should be taken into consideration that, on the one hand, the second half of the Progressive Era brought many statutory victories by the progressive economists and their proponents. Their reforms included state laws that regulated working conditions, fixed minimum wages, determined working hours and banned child labor. American women benefited from the development of the progressive currents. Owing to the engagement of Progressivists, the discourse on the subject of women’s suffrage was the matter of growing importance\textsuperscript{49}. On the other hand, the contemporary conservative nature of the Supreme Court’s judicature was noticeable. Professor Barry Friedman is of the opinion that American judiciary repeatedly struck progressive measures, and the conflict of power between the courts and lawmakers was noticeable\textsuperscript{50}. Rebeca Edwards, observing that the activities of the Supreme Court of the U.S., assumes that „if being thwarted by the Supreme Court keeps one from being called »progressive«, then the legions of twentieth-century reformers will have to forego their titles, as well; an important continuity was that, with notable exceptions, the Supreme Court remained hostile to progressive measures from Reconstruction well into the New Deal”\textsuperscript{51}. Unfortunately, some decisions the Supreme Court reflected the ideological attitudes of the justices rather than an aspiration for reform. The effect of ruling in \textit{Buck v. Bell} was the legitimization of eugenic practices in the United States. The case was also a classic example of an individual’s right versus state rights to control reproduction.

\textsuperscript{47} G.M. Dorr, \textit{Defective or disabled?...}, p. 363.
\textsuperscript{49} Cf. E. Sokalska, \textit{American Progressivism...}, p. 97.
\textsuperscript{50} B. Friedman, \textit{The will of the people. How public opinion has influenced the supreme court and shaped the meaning of the Constitution}, New York 2009, p. 174.
\textsuperscript{51} R. Edwards, \textit{Politics...}, p. 466.
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Keywords: constitutional law, Supreme Court of the United States, judicature, Progressive Era, sterilization, eugenics.

The purpose of the article is the presentation of the directions of reforms and development of eugenic ideas in the Progressive Era in the United States, and the evaluation of the decisions of the Supreme Court of the United States in the context of eugenic practices. Progressives reached their height in the early 20th century as a response to vast industrialization, the growth of large corporations, and the fears of corruption in American politics. The second half of the Progressive Era brought many statutory victories by the progressive economists and their proponents. Their reforms included state laws that regulated working conditions, fixed minimum wages, determined working hours, and banned child labour. Eugenic views justified exclusionary immigration legislation, and economists affiliated with the American Association for Labor Legislation advocating labour reforms were under the influence of ‘race-suicide’ theories. The jurisprudence of the U.S. Supreme Court profoundly influ-
enced the shape of the legal order in economic and labour law. Some decisions reflected the ideological attitudes of the justices rather than an aspiration for reform. The effect of the ruling in *Buck v. Bell* was the legitimization of eugenic practices in the United States. The case was also a classic example of an individual's right versus state's rights to control reproduction.

**Streszczenie**

*Amerykański progresywizm: Sąd Najwyższy Stanów Zjednoczonych i legitymizacja praktyk eugenicznych*

Słowa kluczowe: prawo konstytucyjne, Sąd Najwyższy Stanów Zjednoczonych, orzecznictwo, era progresywna, sterylizacja, eugenika.
