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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

¹ G.W. Ruiz, *The ideological convergence of Theodore Roosevelt and Woodrow Wilson*, „Presidential Studies Quarterly” 1989, Vol. 19, No. 1, part 1: *American foreign policy for the 1990s* and part 2: *Wilson and the Progressive Era*, p. 159.

² R.H. Wiebe, *The search for order, 1877–1929*, New York 1967, pp. 1–333.

³ A.S. Link, *What happened to the progressive movement in the 1920s?*, „The American Historical Review” 1959, Vol. 64, No. 4, p. 836.

⁴ W.H. Rehnquist, *The Supreme Court. Revisited and updated*, New York 2001, pp. 100–110.

extensive is the phenomenon. It should be taken into consideration that the representatives of contemporary scholarship, e.g. Rebecca Edwards, Shelton Stromquist, 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. Leuchtenburg⁵. 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 *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.

⁵ See more in R. Johnston, *Influential works about the Gilded Age and Progressive Era*, [in:] C. McKnight Nichols, N.C. Unger (eds.), *A companion to the Gilded Age and Progressive Era*, Malden–Oxford 2017, pp. 437–449. Daniel T. Rogers is of the opinion that „some writers pointed to critical changes in the rules of political game some emphasized revolutions in power and organization; others hinted at new ways of comprehending the era’s rhetoric and social thought” – idem, *In search of Progressivism. The promise of American history: progress and prospects*, „Reviews in American History” 1982, Vol. 10, No. 4, p. 114.

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 discourse⁶. 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 1900⁷. 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 injustices⁸. 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 politics⁹. 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.

⁶ See, e.g. D.W. Grantham, *The contours of Southern Progressivism*, „The American Historical Review” 1981, Vol. 86, No. 5, pp. 1035–1059; R.B. Nye, *Midwestern progressive politics: a historical study of its origins and development, 1870–1958*, East Lansing 1959, pp. 183–188; R. Edwards, *Politics, social movements, and the periodization of U.S. history*, „The Journal of Gilded Age and Progressive Era” 2009, Vol. 8, No. 4, p. 463.

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.

⁸ R. Edwards, *New Spirits: Americans in the „Gilded Age” 1865–1905*, 2nd edn., Oxford–New York 2011, p. 5. About periodization of the Gilded Age and the Progressive Era see also E.I. Perry, *Men are from the Gilded Age, women are from the Progressive Era*, „The Journal of Gilded Age and Progressive Era” 2002, Vol. 1, No. 1, pp. 25–48, DOI: 10.1017/S1537781400000086; G. Gendzel, *What the progressives had in common*, „The Journal of the Gilded Age and Progressive Era” 2011, Vol. 10, No. 3, pp. 331–339, DOI: 10.1017/S15377811411000089.

⁹ About the roots of progressive change see J.M. Beeby, B.M. Ingrassia, *Precursors to Gilded Age and Progressive Era reforms*, [in:] C. McKnight Nichols, N.C. Unger (eds.), op cit., pp. 21–30; L.L. Gould, *America in the Progressive Era, 1890–1914*, London–New York 2013, pp. 1–18, DOI: 10.4324/9781315839479.

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 realities¹⁰. 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 immigration¹¹.

Unfortunately, we cannot capture the Progressives within a static ideological frame¹². 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 Progressivism¹³. 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 opinion¹⁴. 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

¹⁰ About the organizations of farmers see E. Sanders, *Roots of reforms: farmers, workers, and the American State 1877–1917*, Chicago 1999, pp. 101–147.

¹¹ About Populist Movement see E. Sokalska, *The U.S. Supreme Court and the establishment of the 'Separate but Equal Doctrine'*, [in:] M. Mamiński, M. Rzewuski (eds.), *Contemporary problems of human rights selected aspects*, Warsaw 2019, p. 92.

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 Guillamón (eds.), *Women, society and law: from Roman law to Digital Age*, Warsaw 2022, pp. 86–100.

¹⁴ Cf. J.M. Hogan (ed.), *Rhetoric and reform in the Progressive Era*, East Lansing 2003, p. XV.

society. The multiplicity of reform campaigns is often emphasized in the American subject related literature¹⁵.

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”¹⁶. American Progressives anticipated the world in which “class conflict might be alleviated and class differences gradually dissolved into a new civic order”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”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 inheritance¹⁹. It is significant that Progressive Era eugenic ideas were also influential in other countries, e.g., Scandinavian countries²⁰,

¹⁵ S. Stromquist, *Reinventing „The People”: the progressive movement, the class problem, and the origins of modern liberalism*, Urbana–Chicago 2006, pp. 1–204. For more about the directions of progressive reforms see E. Sokalska, *Searching for progress: Progressivism and the U.S. Supreme Court Jurisprudence (some remarks)*, „Przegląd Prawa Konstytucyjnego” 2020, Vol. 5(57), pp. 446–450, DOI: 10.15804/ppk.2020.05.33. Some scholars use the term ‘progressive’ as an abbreviation for liberal social reformers and moderate socialists, while recognising that they are not ideologically monolith group, cf. M. Freedon, *Liberal languages: ideological imaginations and twentieth-century progressive thought*, Princeton 2005, p. 144.

¹⁶ S. Stromquist, *Reinventing „The People”...*, p. 191.

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.

¹⁸ S. Stromquist, *Reinventing „The People”...*, p. 191.

¹⁹ Some scholars are of the opinion that eugenics movement needs to be studied as transnational social movement, cf. L.L. Glenna, M.A. Gollnick, S.S. Jones, *Eugenics opportunity structures: teaching genetic engineering at U.S. land-grant universities since 1911*, „Social Studies of Science” 2007, Vol. 37, No. 2, pp. 281–296; D. Barret, C. Kurzman, *Globalizing social movement theory: the case of eugenics*, „Theory and Society” 2004, Vol. 33, No. 5, pp. 496–502.

²⁰ Cf F. Dikötter, *Race culture: recent perspectives on the history of eugenics*, „The American Historical Review” 1998, Vol. 103, No. 2, pp. 468–469. See also G. Broberg, N. Roll-Hansen (eds.),

Latin America, Great Britain²¹. The cradle of American eugenics was the institution of Cold Spring Harbor on Long Island²². In 1910, Charles Davenport established Eugenics Record Office, which was a scientific institute that collected biological and social data referring to American population²³. 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”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”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”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 perfecting American democratic institutions²⁷. 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-

Eugenics and welfare state: sterilization policy in Denmark, Sweden, Norway, and Finland, Michigan 1996, 294 pp.

²¹ Cf. Ł Machaj, *Buck versus Bell, czyli eugenika w Sądzie Najwyższym Stanów Zjednoczonych*, „Studia nad Faszyzmem i Zbrodniami Hitlerowskimi” 2009, Vol. 31, p. 422. See about the development of eugenics, especially about the Second International Congress of Eugenics in M. Yudell, *Race unmasked: biology and race in the twentieth century*, New York 2014, pp. 45–56.

²² E. Black, *Eugenics and the nazis: the California connection*, [in:] O.K. Obasogie, M. Darnovsky (eds.), *Beyond bioethics: toward a new biopolitics*, Berkeley 2018, p. 53.

²³ J. Binnebesel, D. Baczala, P. Błajet, *Eugenika – aspekty historyczne, biologiczne i edukacyjne*, „Studia Edukacyjne” 2019, Vol. 52, p. 142, DOI: 10.14746/se.2019.52.10.

²⁴ M. Freedon, *Liberal languages...*, p. 144.

²⁵ F. Galton, *Eugenics: its definition, scope, and aims*, „The American Journal of Sociology” 1905, Vol. 10, No. 1, p. 45. See also J.A. Field, *The progress of eugenics*, „The Quarterly Journal of Economics” 1911, Vol. 26, No. 1, pp. 1–67.

²⁶ S. Stromquist, *Reinventing „The People”...*, p. 192.

²⁷ Ibidem.

ence of progressive eugenic ideas upon American economic reforms²⁸. 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«”²⁹. 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’ persons³⁰.

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

²⁸ T.C. Leonard, *Retrospectives: eugenics and economics in the Progressive Era*, „The Journal of Economic Perspectives” 2005, Vol. 19, No. 4, pp. 207–224; idem, *Illiberal reformers: race, eugenics, and American economics in the Progressive Era*, Princeton 2016, pp. 109–128; idem, *More merciful and not less effective: eugenics and Progressive Era American economics*, „History of Political Economy” 2003, Vol. 35(4), pp. 709–734; idem, *Protecting family and race: the progressive case for regulating women’s work*, „American Journal of Economics and Sociology” 2005, Vol. 64(3), pp. 757–791; cf. E Sokalska, *Searching for progress...*, pp. 454–455.

²⁹ T.C. Leonard, *Retrospectives...*, p. 208.

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 necessary³¹. 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”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 Webb³³.

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

³¹ T.C. Leonard, *Retrospectives...*, pp. 209, 218.

³² *Ibidem*, p. 211.

³³ *Ibidem*, p. 212. See also literature concerning eugenics in Britain, e.g. R.A. Soloway, *Demography and degeneration: eugenics and the declining birthrate in twentieth century Britain*, Chapel Hill 1995 (chapter 8 *Eugenics and the Birth control movement, 1918–1930*), pp. 163–192; idem, *The 'perfect contraceptive' eugenics and birth control research in Britain and America in the interwar years*, „Journal of Contemporary History” 1995, Vol. 30, No. 4, pp. 637–664; D. Stone, *Breeding Superman, Nietzsche, race and eugenics in Edwardian and interwar Britain*, Liverpool 2002 (chapter 4 *Race and eugenics*), pp. 94–114.

in public life. The Supreme Court of the U.S. guided the actions and stabilized tensions of the American judiciary branch³⁴.

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 policy³⁵. 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”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”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”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 1924³⁹ and Virginia Sterilization Act of 1924⁴⁰. 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

³⁴ See more in E. Sokalska, *Searching for progress...*, pp. 450–454. About the activities of the U.S. Supreme Court in greater detail see G. Górski, *Sąd Najwyższy Stanów Zjednoczonych do 1930 roku*, Lublin 2006, pp. 227–277.

³⁵ G.M. Dorr, *Defective or disabled? Race, medicine, and eugenics in Progressive Era Virginia and Alabama*, „The Journal of Gilded Age and Progressive Era” 2006, Vol. 5, No. 4, p. 369.

³⁶ *Ibidem*, p. 370.

³⁷ *Ibidem*, p. 371.

³⁸ *Ibidem*, p. 376.

³⁹ It was overturned in 1967 by the Supreme Court of the U.S. in *Loving v. Virginia*, 388 U.S. 1 (1967).

⁴⁰ More about eugenics and its traces in Virginia's state law during the Progressive Era see G.M. Dorr, *Segregation's science: eugenics and society in Virginia*, Charlottesville–London, 2008, pp. 48–69. About the institutionalization of eugenics in California see also in A.M. Stern, *Eugenic Nation: faults and frontiers of better breeding in modern America*, Berkeley 2016, pp. 82–110.

Feeble-minded. 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 feeble-minded, 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 good⁴². 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 States⁴⁵. 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 Freedon 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 ideologies⁴⁶.

⁴¹ 197 U.S. 11 (1905).

⁴² About the rationale of the verdict see more in Ł. Machaj, op. cit., pp. 423–425.

⁴³ P.A. Lombardo, *Three generations, no imbeciles: new light on Buck v. Bell*, „New York University Law Review” 1985, Vol. 60(30), p. 31. For more about the case see also in idem, *Three generations, no imbeciles: eugenics, the supreme court, and Buck v. Bell*, Baltimore 2008, 384 pp.; and M. Oberman, *Thirteen ways of looking at Buck v. Bell: thoughts occasioned by Paul Lombardo’s „Three generations, no imbeciles”*, „Journal of Legal Education” 2010, Vol. 59(3), pp. 357–392.

⁴⁴ 316 U.S. 535 (1942).

⁴⁵ P.A. Lombardo, *Three generations...*, p. 31.

⁴⁶ Cf. M. Freedon, *Liberal languages...*, p. 144. For more see an original and provocative study of Nancy Ordovery, who traces the history of eugenics in the U.S. from its emergence to the debates over the so-called gay gene – idem, *American eugenics: race, queer anatomy, and the science of nationalism*, Minneapolis 2003, 297 pp. See also R.J. Corber, *American eugenics: race, queer*

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“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 theories⁴⁸. 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 importance⁴⁹. 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 noticeable⁵⁰. 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”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 *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.

anatomy, and the science of nationalism Nancy Ordovery [review], „The American Historical Review” 2004, Vol. 109, No. 4, pp. 1257–1258.

⁴⁷ G.M. Dorr, *Defective or disabled?...*, p. 363.

⁴⁸ A.S. Orloff, T. Skocpol, *Why not equal protection? Explaining the politics of public social spending in Britain, 1900–1911, and the United States, 1880–1920*, „American Sociological Review” 1984, Vol. 49, No. 6, p. 726; T.C. Leonard, *Retrospectives...*, p. 212.

⁴⁹ Cf. E. Sokalska, *American Progressivism...*, p. 97.

⁵⁰ B. Friedman, *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.

⁵¹ R. Edwards, *Politics...*, p. 466.

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Summary

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

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.

Celem artykułu jest przedstawienie kierunków reform i rozwoju idei eugenicznych w dobie *Progressive Era* w Stanach Zjednoczonych oraz ocena orzeczeń Sądu Najwyższego Stanów Zjednoczonych w kontekście praktyk eugenicznych. Na początku XX w. można dostrzec największą aktywność zwolenników nurtu progresywnego w USA. Ich działalność była odpowiedzią na zwiększoną industrializację, rozwój dużych korporacji i obawy przed korupcją w amerykańskiej polityce. Druga połowa ery progresywnej przyniosła wiele wymiernych, legislacyjnych zwycięstw progresywnych ekonomistów i ich apologetów. Reformy obejmowały regulacje stanowe, które dotyczyły warunków pracy, ustalały płace minimalne, określały godziny pracy i zakazywały pracy dzieci. Poglądy eugeniczne uzasadniały ustawodawstwo imigracyjne niekorzystne dla obcokrajowców. Ekonomiści powiązani z American Association for Labor Legislation i opowiadający się za reformami prawa pracy byli pod wpływem teorii *race suicide*. Orzecznictwo Sądu Najwyższego Stanów Zjednoczonych miało ogromny wpływ na kształt porządku prawnego w dziedzinie prawa gospodarczego i prawa pracy. Niektóre decyzje odzwierciedlały raczej ideologiczne nastawienie sędziów niż dążenie do reform. Skutkiem orzeczenia w sprawie *Buck v. Bell* była legitymizacja praktyk eugenicznych w Stanach Zjednoczonych. Sprawa ta była również klasycznym przykładem rywalizacji między jednostką a państwem o możliwość kontroli reprodukcji.

