

Carrie Buck's lawyer, Irving Whitehead. Whitehead himself was an ardent supporter of eugenics and was a founding member of the Virginia Colony in which Carrie and Emma Buck were held. Believing that the involuntary sterilization laws must be upheld, Whitehead intentionally did not challenge the arguments of the state, did not call his own witnesses, and left out essential facts concerning Carrie Buck's life and experiences.

Lombardo does an excellent job of meticulously laying out the sham nature of *Buck v. Bell*, and by the end of the text, the reader is left with no doubt that the case, which has never been overturned, was mired in deceit. However, what is missing from this often dizzyingly detailed account is deeper analysis into the elements of the case and the broader eugenics context in which it occurred. For instance, individuals and groups working to sterilize Carrie Buck and other "undesirables" focused at certain times on the sexualities of these individuals and other times on their reproductive capacities. Unpacking when sexuality was the threat to society and when the continuation of inferior genes was the focus would help untangle the paranoia over the bodies of individuals like Carrie Buck.

Similarly, there is an underlying gender component waiting for deconstruction. Lombardo discusses the pre-*Buck v. Bell* reactions of male prisoners facing forced sterilizations, emblematic in their rallying cries to "keep their manhood" (p. 222). Aside from this relatively brief summary of the prisoners' actions, there is no comparative analysis concerning the forced sterilizations of females and males. Why was there no public outcry about the sanctity of "womanhood" in the same manner? Other analytical questions remain, such as the role of racial identity in the eugenics movement. The historical facts that Lombardo presents are fascinating nuggets of racial politics, class inequality, and fear of the female body. Further analysis of these elements, however, could more clearly deconstruct the role of *Buck v. Bell* within these realms of power.

Case Cited

Buck v. Bell, 274 U.S. 200 (1927).

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Black Robes, White Coats: The Puzzle of Judicial Policymaking and Scientific Evidence. By Rebecca C. Harris. New Brunswick, NJ: Rutgers University Press, 2008. Pp. 208. \$65.00 cloth; \$24.95 paper.

Reviewed by Melissa Hamilton, University of Toledo

The admissibility of expert testimony involving novel scientific evidence has been a contentious issue in criminal law in recent

decades. This book employs the symbolism of professional apparel to characterize the puzzle created by the interaction between the genres of science and law. The scientist's white coat (emblematic of precision and sterility) connotes that a new scientific theory is privileged, yet the judge's black robe (representing neutrality and authority) requires a separate analysis, one constrained by political and legal considerations, as to whether the theory is an appropriate form of evidence in a court of law. Harris offers a fresh, interdisciplinary approach by conducting a systematic empirical analysis of judicial admissibility decisions by state supreme courts in three remarkably dissimilar domains of scientific evidence: forensic DNA (153 cases); polygraph testing (165 cases); and psychological syndromes, namely rape trauma syndrome (31 cases) and battered women's syndrome (40 cases). The psychological syndrome evidence tends to be useful to explain counterintuitive behaviors of victims of violence such as failing to report assaults and having further contact with their attackers.

Harris's thesis is that the judicial gatekeeping decision about whether to admit a particular scientific theory into evidence is not a purely legal conclusion, nor a truly scientific endeavor, but is better conceptualized as a politicized mode of behavior. To test this thesis, the author engages three sets of factors to help explain judicial gatekeeping decisions: (1) the legal threshold for admissibility of scientific theories in the relevant jurisdiction, which Harris characterizes as the strict *Frye* standard of general acceptance in the relevant scientific community (*Frye v. U.S.* 1923), the *Daubert* reliability of the scientific evidence standard (*Daubert v. Merrell* 1993), and a more liberal relevancy standard modeled after Federal Rule of Evidence Section 702; (2) attitudinal variants using proxies based on the political party persuasions of the ruling supreme court judges and the political leaning of the region in which the court sits; and (3) institutional and organizational variables, such as the identity of which party (prosecution or defense) is offering the scientific theory into evidence, relevant decisions of peer courts, and support by third parties, such as amicus filers and reports by public policy groups. Harris theorizes that even though empirical support for the scientific theory may be a constant, the net effect of federalism means that judicial acceptance of the science may vary from state to state.

The author reaches four main conclusions. First, the legal threshold for admissibility has accounted for much of the states' variance in gatekeeping decisions. Judges were much more likely to accept the science in jurisdictions maintaining a more liberal evidentiary standard. Second, political party preference mattered. Conservative judges were more likely to admit evidence when offered by the prosecution, while liberal judges were more likely to

admit if requested by defense counsel. Third, the prosecution's position on the admissibility of the science was the most common winner in the admissibility decision, indicating support for the goal of law enforcement. As for regional influence, the only statistically significant result was that northwestern U.S. courts were more likely to reject DNA evidence. Finally, external policy actors played a surprisingly minimal role in the decisionmaking process about the novel sciences, having filed few amicus briefs in the cases. The one exception was a national research foundation's formal support for the validity of DNA evidence, which was correlated with the judicial trend toward its broader acceptance.

While this work provides an enriching perspective on the politics of judicial decisions on new scientific theories, there is one notable weakness. The author acknowledges, but leaves to future study, the role of state statutes that mandate the admissibility or rejection of the types of scientific evidence at issue in this research. But since this legislative cooptation of gate-keeping decisions likely had some causative effect on state variation in, and judicial patterns of, admissibility in these cases, it preferably would have been a variable to control for in the main research.

In sum, *Black Robes, White Coats* provides an innovative approach to studying judicial behavior that goes beyond traditional logic-based legal analysis by exploring the impact of internal and external political factors. Any one judicial gatekeeping decision about a science should not be considered in a vacuum since it has likely been influenced by other factors and it may itself affect larger trajectories of admissibility patterns. The reliability of science in the courtroom, the author determines, is filtered through scientific, legal, and, more important, political lenses. The result implicates public policy concerns to further consider. This book will be useful to a variety of readers, including criminal law practitioners, sociolegal scholars, and expert witnesses.

Cases Cited

Daubert v. Merrell, Dow Pharmaceuticals, 509 U.S. 579 (1993).
Frye v. U.S., 293 F. 1013 (D.C. Cir. 1923).

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The Madisonian Constitution. By George Thomas. Baltimore: Johns Hopkins University Press, 2008. Pp. xi+248. \$50.00 cloth.

Reviewed by Stanley C. Brubaker, Colgate University

In the popular imagination (and high school civic textbooks) it is the courts generally, and the Supreme Court in particular, with