

Pierce Butler's Supreme Court Opinions

Buck v. Bell

In 1927, the Supreme Court ruled that sterilization of female dependents by a state was lawful.¹ Carrie Buck, an eighteen-year-old resident of a state facility, had been classified by Virginia administrators as “feeble-minded,” promiscuous and thus at risk of pregnancy. A Virginia statute allowed for forced sterilization of women to prevent their passing unwanted biological traits on to their offspring.

Carrie Buck challenged this ableist law. The Supreme Court, however, upheld Virginia’s power to sterilize her and women like her. Oliver Wendell Holmes wrote that Virginia had a greater interest in sterilizing Buck to save future welfare costs than Buck had the right to have children. In a noxious statement, Holmes wrote, “Three generations of imbeciles are enough.”²

Pierce Butler was a Catholic, and he was the sole dissenting vote in *Buck v. Bell*. But he did not write an opinion. Butler’s silence causes some pause to this day. As someone who was known

to be stubborn in the struggle for what he believed to be right,³ Butler could have challenged the cruelty of this decision, which prioritized budgetary expediency over body autonomy. A dissent on equal protection grounds had merit, as it was later ruled,⁴ since individuals who were not institutionalized were not subjected to sterilization, and neither were institutionalized males. One of the purposes of a dissent is to show the way to a better outcome. Pierce Butler had the opportunity to make a statement; he kept silent instead.

NOTES

1. *Buck v. Bell*, 274 U.S. 200 (1927).
2. *Buck*, 274 U.S. at 207.
3. Francis J. Brown, *The Social and Economic Philosophy of Pierce Butler* (PhD diss., Catholic University of America, 1945), 6.
4. *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942).

Olmstead v. United States

In *Olmstead*, Chief Justice William Howard Taft and the five-justice majority wrestled with the Fourth Amendment’s meaning in a wiretap case. Roy Olmstead was a bootlegger.¹ Federal agents had gotten evidence against him by tapping his telephone, but without getting a warrant—that is, permission from a judge.² The Fourth Amendment provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” The sole issue in the case was whether “houses, papers, and effects” included telephone conversations.

The Supreme Court majority ruled no: The Constitution meant in 1928 precisely what it had meant in 1787, and that telephone conversations did not apply because they were not “houses, papers, and effects.”³

Butler joined in dissent with Justices Brandeis, Holmes, and Stone, a rare alliance. Butler was generally criticized for his rigidity and a resistance

to flexibility in interpreting the Constitution. But not in *Olmstead*. “This Court has always construed the Constitution in the light of the principles upon which it was founded,” he wrote. “[The] literal meaning of the words used do not measure the purpose or scope of its provisions.”⁴ Telephone conversations by nature were private; while the parties conversed, the lines belonged to them and could not be invaded without a proper warrant. Butler recognized a right to privacy in the Fourth Amendment, fully recognized by the court only four decades later. Here, Pierce Butler was ahead of his time.⁵

NOTES

1. *Olmstead v. United States*, 277 U.S. 469 (1928).
2. U.S. Const. amend. IV.
3. *Olmstead*, 277 U.S. at 465.
4. *Olmstead*, 277 U.S. at 487.
5. *Katz v. United States*, 389 U.S. 347 (1967).

Near v. Minnesota

Probably the most famous US Supreme Court case to come out of our state is *Near v. Minnesota*.¹ It had to do with whether or not a judge could shut down a newspaper that had been shown to have printed false and defamatory material. Jay Near, publisher of the *Saturday Press*, had his paper shut down by a Minneapolis judge in 1927, after he published a series of hideously antisemitic pieces targeted at local officials. Jay Near challenged the law in Minnesota courts but lost; the Minnesota Supreme Court approved the statute.² When he then took the case to the US Supreme Court, the issue was framed as one of First Amendment freedom, and he won. The case has stood ever since as barring “prior restraint” of journalistic publication.

The 1931 decision was a very close one, 5–4. Pierce Butler wrote a vigorous and heartfelt dissent on behalf of the Four Horsemen. “It is of the greatest importance,” he wrote, “that the States shall be untrammelled and free to employ all just

and appropriate measures to prevent abuses of the liberty of the press.”³ Had Butler’s view prevailed, it seems likely that American press freedoms, especially in times of crisis, would have been much narrower. *Near* was most famously cited in the Pentagon Papers case, where the Supreme Court rejected President Nixon’s attempt to stop their publication by the *Washington Post*.⁴ A different result in *Near* would have permitted a finding that publication amounted to an “abuse of the liberty of the press,” and kept the Pentagon Papers secret.

NOTES

1. *Near v. Minnesota*, 283 U.S. 697 (1931).
2. *State ex rel. Olson v. Guilford*, 174 Minn. 457, 219 N.W. 770 (1928).
3. *Near*, 732.
4. *New York Times Co. v. United States*, 403 U.S. 713 (1971).

Powell v. Alabama

On March 25, 1931, two white women falsely accused nine Black teenagers of rape. The allegation unleashed a decades-long legal fight which ultimately exonerated the men. A common racist trope, propped up with negligent legal representation, brought the first of three cases involving the Scottsboro Nine to the US Supreme Court in *Powell v. Alabama*.¹

The nine were brought to trial less than two weeks from arrest. Unprepared counsel stumbled their way through three very short trials and nearly instant verdicts. All nine were convicted in a flagrant racial railroading; eight of the nine were sentenced to death.²

In reversing the nine convictions, conservative justice George Sutherland wrote that the defendants were young and illiterate, surrounded by hostile sentiment inflamed by salacious allegations. Their lives were in peril from the first moment counsel began representing them. Sutherland wrote that the Sixth Amendment guarantees effective representation, not

merely the presence of a lawyer: “No attempt was made to investigate. No opportunity to do so was given.”³

Pierce Butler declined to acknowledge the judicial steamrolling of Black defendants in Southern state courts. He professed to be satisfied with the defense counsels’ effort and was more concerned with intruding on the courts of Alabama than protecting the rights of the accused. “This is an extension of federal authority into a field hitherto occupied exclusively by the several States.”⁴ Had Butler won a majority, eight innocent youths would have been electrocuted, with his blessing.

NOTES

1. *Powell v. Alabama*, 287 U.S. 45 (1932).
2. A thirteen-year-old was given a life sentence.
3. *Powell*, 287 U.S. at 58.
4. *Powell*, 287 U.S. at 76.