

Skinner v. Oklahoma (1942)

In 1942, the United States Supreme Court Case of *Skinner v. Oklahoma* ruled that states could not legally sterilize those inmates of prisons deemed habitual criminals. *Skinner v. Oklahoma* was about the case of Jack Skinner, an inmate of the Oklahoma State Penitentiary in McAlester, Oklahoma, who was subject to sterilization under the Oklahoma Habitual Criminal Sterilization Act of 1935. The case, decided on 1 June 1942, determined that state laws were unconstitutional if those laws enabled states to forcibly sterilize inmates deemed to be habitual criminals. Such laws violated the Equal Protection Clause of the Fourteenth Amendment to the US Constitution. The *Skinner v. Oklahoma* decision also reflected tensions in US eugenic policies when juxtaposed against similar policies of the Nazi regime in Europe, especially with regard to sterilization measures.

Skinner v. Oklahoma was one of the first US Supreme Court cases to introduce the concept of strict scrutiny analysis as a means to evaluate the constitutionality of laws. When Justices strictly scrutinize the constitutionality of a law that impinges on the rights of individuals or groups, also called applying strict scrutiny, they compare the restrictions to how well that law enables the government to achieve one of its interests. To pass strict scrutiny, legislatures must have narrowly tailored the wording of the law to not unduly restrict the rights of individuals and they must not apply the law with systematic bias. In subsequent US Supreme Court decisions, *Skinner v. Oklahoma* influenced other strict scrutiny cases including those about reproductive rights, such as *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992).

The Oklahoma Habitual Criminal Sterilization Act of 1935 (Sterilization Act) mandated that the state order and perform sterilizations on people who had been convicted of crimes two or more times in Oklahoma or any other state, and who were incarcerated in Oklahoma. However, there were exceptions to the law, including those convicted of crimes such as embezzlement, the violation of prohibitory laws or revenue acts, and political wrongdoings. If an individual was accused of violating a law, the state attorney general prosecuted the individual and organized a jury trial. If the jury considered the accused person to be a habitual criminal under the Sterilization Act's definition, and if the jury determined that sterilization would have no negative effects on the violator's health, then the state attorney general would provide the resources to conduct the sterilization. A vasectomy, a technique in which the duct that delivers sperm to the urethra is cut and sealed, was performed on males. A salpingectomy, the removal of fallopian tubes, was performed on females.

The attorney general of Oklahoma began using the Sterilization Act in May 1936. The attorney general filed the first petition under the Sterilization Act against Hubert Moore, a five-time convicted criminal imprisoned at the Oklahoma State Penitentiary in McAlester, Oklahoma. When news about the Sterilization Act's enforcement spread throughout the prison population, prisoners rioted. According to news reports, bodies were thrown out of the windows of the prisons, riots ensued, and multiple prisoners attempted to escape. Hubert Moore escaped from Oklahoma State Penitentiary in June 1936, and after his escape, the attorney general instead filed a petition against another qualifying inmate, Jack Skinner. Skinner met the criteria for sterilization under the Sterilization Act due to being convicted for three separate crimes. In 1926, he was convicted of theft for stealing chickens, in 1929, he was convicted of armed robbery, and in 1934, he was convicted of another armed robbery for stealing money. After being convicted for armed robbery in 1934, Skinner was imprisoned at Oklahoma State Penitentiary.

In October 1936, Skinner was prosecuted under the Sterilization Act through a jury trial, which resulted in a verdict for sterilization. Skinner's lawyers appealed the result to the Supreme Court of Oklahoma as being unconstitutional by violating the Fourteenth Amendment. The Supreme Court

of Oklahoma in Oklahoma City ruled against the appeal and the majority supported the recommendation of sterilization. The Supreme Court of Oklahoma decision was split with five justices in favor of sterilization, and the other four voting against the procedure, noting uncertainty about the heritability of criminal traits, and arguing that the capacity to have children was a natural and inherent human right.

Building on the objections of those justices who voted against sterilization, a pair of Oklahoma attorneys, Heba Irvin Aston and Guy Andrews, appealed the case to the United States Supreme Court in Washington, D.C., in 1942 on Skinner's behalf. Aston and Andrews claimed that the Oklahoma Habitual Sterilization Act violated the Due Process and Equal Protection clauses of the Fourteenth Amendment. The Due Process Clause of the Fourteenth Amendment requires the states to follow the same obligations put on the federal government by the Fifth Amendment. The Fifth Amendment states that no person shall be deprived of life, liberty, or property without due process of the law. States were therefore obligated to operate within the law and provide fair procedures or fair processes for those convicted of crimes. The Equal Protection Clause of the Fourteenth Amendment forbids states from unequally applying laws or denying protection of laws for an individual or for groups of people.

Aston and Andrews claimed that under the terms of the Act, some of the most documented criminals in history, such as US gangster Al Capone or Giuseppe Zangara or the attempted-assassin of President Franklin D. Roosevelt, would not be sterilized until convicted at least three times. Additionally, Aston and Andrews claimed that exempting crimes like embezzlement created an arbitrary distinction among criminals, thereby violating the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The United States Supreme Court accepted the appeal in the summer of 1942.

The Supreme Court heard oral arguments for the case on 6 May 1942 and issued an opinion on 1 June 1942. Justice William O. Douglas delivered the opinion of the court. In the opinion, the Supreme Court declared compulsory sterilization of habitual criminals under the Sterilization Act unconstitutional with respect to the Equal Protection Clause of the Fourteenth Amendment. In the opinion, Justice Douglas discussed the issue of differentiating between persons who committed certain types of crimes, such as theft, versus persons who committed different types of crimes, such as embezzlement. As a part of the Supreme Court's opinion, Justice Douglas claimed that the distinction between crimes was a form of discrimination that unfairly targeted minority groups for sterilization. Moreover, Justice Douglas said that the artificial distinction between different types of crimes was not supported by eugenic principles. Justice Robert H. Jackson and Chief Justice Harlan Fiske Stone wrote concurring opinions.

Chief Justice Stone was not persuaded by the logic presented by Justices Douglas, which assumed that compulsory sterilization based on the type of crime violated equal protection rights. Instead, Chief Justice Stone claimed that the real question surrounding the case was not one of equal protection, but of procedural due process. The US Supreme Court case *Buck v. Bell* (1927) held that compulsory sterilization of the mentally ill did not violate the Due Process Clause of the Fourteenth Amendment. Therefore, *Buck v. Bell* set the precedent that a state may constitutionally interfere with personal liberties to prevent certain persons from transmitting what were considered socially injurious characteristics, such as feeble-mindedness. For Stone, however, it was unclear whether habitual criminals could transmit criminal tendencies to their offspring, which Stone said was a key issue in *Skinner v. Oklahoma*.

According to Chief Justice Stone, there were limits on the extent that a legislative body could conduct biological experiments at the expense of the dignity or personal liberty of persons in question, such as those deemed as habitual criminals. Chief Justice Stone claimed that for procedural due process to be properly fulfilled in the case, convicted habitual criminals needed a chance to test the law's assumption that the criminal behavior was heritable. This allowance was not included in The Oklahoma Sterilization Act of 1935.

Chief Justice Stone's arguments in *Skinner v. Oklahoma* laid the foundation for courts later to apply strict scrutiny analysis regarding equal protection for those considered to fall under the category of suspect classification. Suspect classification is a term used to describe an identifiable group, such

as those classified under a certain race, or those classified as habitual criminals. Those who fall under a suspect classification can often reference history to support the notion that they may be subject to discrimination. The interpretation in *Skinner v. Oklahoma* also set an early precedent for the relationship of the right to privacy in context of substantive due process. Substantive due process is court protection of fundamental rights from government interference.

In 1941, one year before *Skinner v. Oklahoma* was decided, many in the US became concerned about forced sterilization due to widespread press coverage of Nazi sterilization policies and of those in the US. US eugenicists struggled to defend their own policies during this time, but courts did not condemn eugenic practices, such as sterilization of persons deemed to have socially detrimental traits. During *Skinner v. Oklahoma*, only Justice Jackson alluded to the notion that there could be something ethically wrong with compulsory sterilization laws. Although *Skinner's* victory made it illegal to administer sterilizations based on the type and number of crimes in the United States, it did not alter the ruling in *Buck v. Bell*, which allowed compulsory sterilization of the mentally ill.

Of the greater than 64,000 compulsory sterilizations performed under eugenic policies in the United States, punitive sterilizations constituted a small percentage. Sterilizations for reasons other than punishment continued for decades after *Skinner v. Oklahoma*. Between 1950 and 1967, bills for compulsory sterilization of unwed mothers were introduced in more than twelve state legislatures, but none became law. The Oregon State Board of Eugenics in Salem, Oregon, performed what many took to be the last documented compulsory sterilization in the United States in 1981. However, investigations in 2013 confirmed that from 2006 to 2010, 148 female inmates at two California prisons were unlawfully sterilized.

The decision of *Skinner v. Oklahoma* was made on an equal protection basis. The case has been used as a precedent for sexual privacy decisions and its influence stretches to issues about racial discrimination, sex equality, and affirmative action.

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