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DISABILITY: A DEMOCRATIC DILEMMA

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Acknowledgments

And by some accident of luck or grace,
Some window less than half a century wide,
It is my backyard but not what happened
To my body—

- Molly McCully Brown[1]

You don't vanish because that's what you want or need.
You vanish because that's what the state offers. You make
your choice from an array of one.

- Harriet McBryde Johnson[2]

In writing this dissertation, I have often recalled Harriet McBryde Johnson's haunting piece, "The Disability Gulag," first published in the *New York Times Magazine* in November 2003. In it, McBryde Johnson, a disability rights lawyer born with a neuromuscular disorder, reflects on her lifelong fear of being placed in an institution. Observing that her independence—her avoidance of the so-called "disability gulag"—has less to do with her needs or desires than with her financial status, she vividly captures the perversity of a system that grants freedom and independence only to those disabled people who can afford it. She also highlights, as does McCully Brown, the terrifying proximity of institutionalization for disabled people who, whether because of luck or money, are able to avoid its grasp. For McCully Brown, it is the looming

[1] Molly McCully Brown, "The Central Virginia Training Center (Formerly the Virginia State Colony for Epileptics and Feebleminded)," in *The Virginia State Colony for Epileptics and Feebleminded* (New York: Persea Books, 2017), 4.
[2] Harriet McBryde Johnson, "The Disability Gulag," *The New York Times Magazine*, November 23, 2003, https://www.nytimes.com/2003/11/23/magazine/the-disability-gulag.html.

presence of the building that once housed the Virginia State Colony for Epileptics and Feebleminded near her childhood home that invites her to contemplate the distance between her own circumstances and the lives once lived within its walls.

Like McCully Brown, I was born with cerebral palsy. Not knowing how the condition would affect me, my grandmother began saving in the event that I might need life-long care. My parents often recount this story with some amusement, as if the possibility of my requiring more support seems, in retrospect, preposterous. And yet, like McBryde Johnson, I am acutely aware of how many of my achievements—graduating college, pursuing a graduate degree, and living independently—were facilitated by my access to resources that remain unavailable to many (if not most) disabled people. This is not to discount these achievements, but rather to acknowledge the conditions that made them possible. I therefore would like to begin these acknowledgments in reverse order, by thanking my family, and especially my parents, Barbara and Dan Heffernan, for not only supporting me throughout graduate school and the long process of writing this dissertation, but also for fighting for my access to the kind of education, medical care, and support that made such an endeavor possible. And to my grandmother, Kathleen Heffernan, whom I credit for my inquisitiveness, stubbornness, and determination—I wish you had been here for this journey.

Writing a dissertation can be a lonely process, and writing a dissertation on disability and political theory perhaps even more so. To this end, I especially want to thank my committee—Linda Zerilli, Patchen Markell, Demetra Kasimis, and Susan Schweik—who together made it possible for me to imagine a space for disability within political theory and convinced me of the importance of such an undertaking. It is to Linda that I largely credit my decision to pursue a Ph.D. in political science, having enrolled in her Advanced Theories of Gender and Sexuality

graduate seminar as a MAPSS student on something of a whim. I don't think she realizes how consequential that course was both for the way I approach my own work, and for how I navigate the broader issue of the relationship between political theory and contemporary political problems. Although not herself a disability studies scholar, Linda showed me that disability could be, as she put it, a "politically significant category," and that this work was necessary, vital, and worth pursuing. After years of being told that focusing on disability would be too "niche," or too personal, I cannot stress enough the significance of her initial faith in my research topic. Consistently pressing me to sharpen my claims—while also pulling me back from my tendency to get hopelessly lost in the details—Linda has an enviable ability to distill coherent arguments from my jumbled and half-formed thoughts, and my work is much better for it. Likewise, Patchen's infectious curiosity, seemingly boundless knowledge, and willingness to follow me down what I'm sure seemed (and likely still seem) like strange and idiosyncratic research pathways have been invaluable to this dissertation and to my ongoing development as a political theorist. His presence at Chicago is very much missed. A source of much needed advice on everything from the job market to surviving the final years of graduate school, Deme modelled the kind of intellectual rigor and precision that I can only approximate here. Finally, I cannot thank Sue Schweik enough for her willingness to serve as an outside reader on a committee full of political theorists (alas). Having mostly navigated the terrain of disability studies on my own, Sue engaged me in a conversation I didn't know I had been missing. It was a relief. Her unwavering support, intellectual generosity, and passion for teaching and research are a model for the kind of scholar I hope to become.

Studying political theory at the University of Chicago has been an immense privilege, and I credit much of my intellectual development to the professors, postdoctoral fellows,

graduate, and undergraduate students who make up this vibrant community. I owe a debt of gratitude to faculty—both within and beyond political science—whose guidance, feedback, and suggestions were crucial to the development of this dissertation. I would especially like to thank Chiara Cordelli, Michael Dawson, Michele Friedner, Adom Getachew, Bob Gooding-Williams, Gary Herrigel, Don Kulick, Matthew Landauer, John McCormick, Sankar Muthu, Jennifer Pitts, C. Riley Snorton, and Jim Wilson. Equally important were my cohort-mates and fellow graduate students, among them: Stephanie Ahrens, Chris Berk, Amanda Blair, Ashleigh Campi, Daragh Grant, Allison Harris, Alex Haskins, Sarah Johnson, Emily Katzenstein, Will Levine, Ainsley LeSure, Dan Luban, Emma McKinnon, Asfandyar Mir, Daniel Nichanian, Tejas Parasher, Natasha Piano, Lucas Pinheiro, Nazmul Sultan, and Larry Svabek. Since being introduced nearly nine years ago, Claire McKinney has been a constant source of friendship, laughter, and sage advice, and I am forever grateful that our time at Chicago overlapped, if only for a year or two. One of a handful of fellow political theorists working on disability, Claire remains a vital sounding board, co-panelist, and perennial conference hotel roommate (with or without mice). Finally, I wish to thank the members of Linda's dissertation writing group—Aylon Cohen, Onurasol Erol, Silvia Fedi, Delaina Heiberg, and Agatha Slupek (and, of course, Linda)—for their feedback and encouragement over the past two years. May you never have to read another version of Chapter Two.

This dissertation would not have been possible without the support of the Center for the Study of Gender and Sexuality—my campus home for the past six years. To Tate Brazas, Bonnie Kanter, Gina Olson, Lucy Pick, Kristen Schilt, Sarah Touhey, and Linda Zerilli, thank you for providing a community and a space where I and so many others could feel at home. Thank you also to the many CSGS and CSRPC fellows with whom I crossed paths over the years, especially

Emily Bok, Carly Buxton, Michael Dango, Cayce Hughes, Chase Joynt, Monica Mercado, Katya Motyl, Ray Noll, Erin Pineda, Caroline Seguin, Agatha Slupek, Alyssa Smith, and Jean-Thomas Tremblay. Your hallway chats, write-in happy hours, and impromptu wine-fueled venting sessions offered a respite from the less-enjoyable aspects of graduate school, and I would not have survived this journey otherwise.

This research has been supported by dissertation fellowships from the Pozen Family Center for Human Rights and the Center for the Study of Gender and Sexuality, as well as research and travel grants from the Department of Political Science and the Division of the Social Sciences. At the Pozen Center, I wish to thank Ashley Pierce and Mark Bradley, who together created a vibrant community of fellows, even as COVID made meeting in person impossible. Mark has been one of the most thoughtful readers of my work, and I wish our paths at Chicago had crossed sooner.

Finishing a dissertation in the midst of a global pandemic was less than ideal, and I owe so much to my friends, family, and committee members for sustaining me through what at times felt like a daunting if not impossible task. I look forward to reuniting in person at some point in the not-too-distant future.

Abbreviations

ACA	Affordable Care Act
ADA	Americans with Disabilities Act of 1990
ADAA	Americans with Disabilities Amendments Act
AFL	American Federation of Labor
BLL	Blood Lead Level
CDC	Centers for Disease Control and Prevention
DWSD	Detroit Water and Sewage Department
EEOC	Equal Employment Opportunity Commission
EM	Emergency Manager
ENDA	Employment Non-Discrimination Act
FCS	Flint Community Schools
FLSA	Fair Labor Standards Act of 1938
GISD	Genesee Intermediate School District
HUD	Housing and Urban Development
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Plan
KWA	Karegnondi Water Authority
LIA	Lead Industries of America
MDE	Michigan Department of Education
MDEQ	Michigan Department of Environmental Quality
NYCHA	New York City Housing Authority
SSA	Social Security Administration
SSI	Supplemental Security Income
SSDI	Social Security Disability Insurance

Introduction

Bothersome Behavior

Speaking at a campaign rally in Myrtle Beach, South Carolina on November 24th, 2015, then-Republican presidential candidate Donald Trump famously mocked *New York Times* reporter Serge Kovaleski, whose September 2001 article had been cited by Trump as evidence of the "thousands upon thousands of people cheering" the fall of the World Trade Center—a claim that Kovaleski contested. "Now the poor guy, you ought to see this guy," Trump said, flailing his arms in a crude mimic of Kovaleski, who has arthrogryposis, a congenital condition affecting mobility in his arms: "Uhh…I don't know what I said! I don't remember!"[1] Widely denounced as "shocking," "outrageous," and "despicable," an August 2016 Bloomberg poll found that the incident was judged the most "bothersome" of Trump's many campaign-trail controversies.[2] Nearly five years later, Trump's mocking of Kovaleski is often referenced as an augur of the

[1] The original article was in fact co-authored with Frederick Kunkle, though Kunkle was rarely mentioned in coverage of the incident. See Serge F. Kovaleski and Fredrick Kunkle, "Northern New Jersey Draws Probers' Eyes," *Washington Post*, September 18, 2001, https://www.washingtonpost.com/archive/politics/2001/09/18/northern-new-jersey-draws-probers-eyes/40f82ea4-e015-4d6e-a87e-93aa433fafdc/. Speaking on the Paris massacre at a campaign rally in Birmingham, Alabama earlier that week, Trump claimed there had been "thousands and thousands of people cheering as…[The World Trade Center] was coming down." See also Jose A. DelReal, "Trump Draws Scornful Rebuke for Mocking Reporter with Disability," *Washington Post*, November 26, 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/11/25/trump-blasted-by-new-york-times-after-mocking-reporter-with-disability/; Glenn Kessler, "Trump's Outrageous Claim That 'Thousands' of New Jersey Muslims Celebrated the 9/11 Attacks," *Washington Post*, November 22, 2015, https://www.washingtonpost.com/news/fact-checker/wp/2015/11/22/donald-trumps-outrageous-claim-that-thousands-of-new-jersey-muslims-celebrated-the-911-attacks/.

[2] Ben Schreckinger, "New York Times Slams Trump's Mocking of Reporter as 'Outrageous,'" Politico, November 25, 2015, https://www.politico.com/story/2015/11/donald-trump-mocks-new-york-times-reporter-serge-kovaleski-216219; Irin Carmon, "Trump's Worst Offense? Mocking Disabled Reporter, Poll Finds," NBC News, August 10, 2016, https://www.nbcnews.com/politics/2016-election/trump-s-worst-offense-mocking-disabled-reporter-poll-finds-n627736. It's unclear from the coverage of the survey results how "bothersome" was defined.

cruelty of his administration, an indication not only of Trump's deficient moral character but also that of his supporters.[3] How, many on the left wondered, could so many Americans vote for a man who seems so incapable of basic human decency?

For all the outrage surrounding the incident, it hewed to a familiar script in which spectacles of cruelty towards disabled people elicit widespread disbelief and disapprobation, while more systemic inequalities and exclusions remain unremarked. Kovaleski—often referred to, simply, as "a disabled reporter"—was recast as the proper object of benevolence and compassion, recalling a long tradition of American solicitude toward the less fortunate.[4] Routinely called upon to reaffirm the moral goodness of their defenders, such figures of disability and the "acts of conspicuous compassion" they elicit occupy a specific place in American culture.[5] Often evacuated of personality, like Kovaleski, they appear as nameless figures who exist primarily for the moral edification of scandalized onlookers—what, following Sarah Chinn, we might refer to as "prosthes[es] for able-bodied fellow feeling."[6]

The "relation[s] of feeling" cultivated in these moments do not, as Lauren Berlant cautions, necessarily (or even typically) provoke amelioration or redress. Rather, these "scenes

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[3] See, most recently, Mary L. Trump, *Too Much and Never Enough: How My Family Created the World's Most Dangerous Man* (New York: Simon & Schuster, 2020), 10.

[4] See especially Carmon, "Trump's Worst Offense?"; Glenn Kessler, "Donald Trump's Revisionist History of Mocking a Disabled Reporter," *Washington Post*, April 2, 2016, https://www.washingtonpost.com/news/fact-checker/wp/2016/08/02/donald-trumps-revisionist-history-of-mocking-a-disabled-reporter/; Cristina Marcos, "Rep. Waters Brings Photo of Trump Mocking Disabled Reporter to House Floor," The Hill, July 27, 2017, https://thehill.com/blogs/floor-action/house/344111-rep-waters-brings-photo-of-trump-mocking-disabled-reporter-to-house; Greg Sargent, "Another Witness Contradicts Donald Trump's Claims about Disabled Reporter," *Washington Post*, November 30, 2015, https://www.washingtonpost.com/blogs/plum-line/wp/2015/11/30/another-witness-contradicts-donald-trumps-claims-about-disabled-reporter/. Nick Corasaniti of the *New York Times* strayed from this script only slightly, referring to Kovaleski as a "disabled journalist." See Nick Corasaniti, "'Super PAC' Highlights Donald Trump's Mockery of Disabled Journalist," *The New York Times*, June 6, 2016, sec. U.S., https://www.nytimes.com/2016/06/07/us/politics/super-pac-highlights-donald-trumps-mockery-of-disabled-journalist.html.

[5] Sheila C. Moeschen, *Acts of Conspicuous Compassion: Performance Culture and American Charity Practices* (Ann Arbor, MI: University of Michigan Press, 2013).

[6] Sarah E. Chinn, "Gender, Sex, and Disability: From Helen Keller to Tiny Tim," *Radical History Review* 94 (Winter 2006): 240.

of suffering" and spectacle are meant to "organize a public response"—a public feeling—in this case, outrage and shock.[7] Clarifying and reinforcing the moral boundaries of society, scenes like the one at Myrtle Beach are only nominally about disability. Indeed, for all the outrage occasioned by Trump's treatment of the "disabled reporter," there was little discussion in the ensuing coverage of the event of how a Trump (or a Clinton) presidency would affect disabled Americans, nor was there much willingness to interrogate *why* so many of his supporters found such behavior acceptable (except insofar as it provided further evidence of their collective moral bankruptcy).

Long rendered as morally—but rarely politically—significant, disability is often called upon to evoke pity and sympathy, and thus to register, through the treatment of those so "afflicted," the moral health of society. This particular dynamic, outlined by Paul Longmore in his landmark book, *Telethons: Spectacle, Disability, and the Business of Charity*, captures both the limits of public evocations of pity and sympathy as incitements to political action as well as their significance for organizing popular beliefs concerning the boundaries of social obligation and reciprocity. Indeed, just as telethons often "use[] people with disabilities to effect the spiritual redemption, moral restoration, and social elevation of their benefactors," so too have these scenes of disability (that is, scenes like the one at Myrtle Beach) been called upon to "restore a sense of American moral community" in the face of its supposed decline.[8] These moments act as what, following Berlant, we might refer to as "social and aesthetic technolog[ies] of belonging"—that is, as opportunities to "clarify for ourselves and others where we stand

[7] Lauren Berlant, "Introduction: Compassion (and Withholding)," in *Compassion: The Culture and Politics of an Emotion*, ed. Lauren Berlant (New York: Routledge, 2004), 4, 6.
[8] Paul K. Longmore, *Telethons: Spectacle, Disability, and the Business of Charity*, ed. Catherine Kudlick (New York: Oxford University Press, 2016), 59.

morally, or where we *want* to stand."[9] How we respond to disability in these contexts becomes, Longmore argues further, a "gauge[] [of] the moral condition of the community."[10] From a more cynical perspective, the scene at Myrtle Beach illustrates the enduring perception of disabled people as passive and nameless recipients of public sympathy whose appearance in public is contingent upon their capacity "to supply nondisabled people with an occasion to exercise charity and thereby reaffirm their own normality" and beneficence.[11]

Though Trump's behavior in Myrtle Beach was abhorrent, like many disabled people, I found the ensuing condemnations to be disingenuous, if not downright hypocritical. Indeed, nearly five years later in June 2020, many of the same people who had expressed outrage at Trump's treatment of Kovaleski would in turn mock Trump's halting, uncertain walk down a ramp following a speech at the United States Military Academy at West Point. Prompting ongoing speculation over the President's health, Trump's difficulty descending the ramp, coupled with his need to use both hands to drink from a cup of water during the speech, quickly became late-night talk show fodder and the focus of several social media hashtags and accompanying reenactments (some by sitting United States Congressmen), among them, #TrumpWaterChallenge, #TrumpIsNotWell, and #RampGate.[12] That these responses were *also* engaging in mockery was dismissed by many participants as beside the point. They were simply giving Trump a taste of his own medicine.

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[9] Berlant, "Introduction," 5; Andrew Pulrang, "In the World of Disability, Outrage Comes Naturally, but Action Endures," Forbes, May 21, 2020, https://www.forbes.com/sites/andrewpulrang/2020/05/21/in-the-world-of-disability-outrage-comes-naturally-but-action-endures/.
[10] Longmore, *Telethons*, 65.
[11] Longmore, 82.
[12] Rebecca Cokley, "Calling Trump Unwell Doesn't Hurt Trump. It Hurts Disabled People," *Washington Post*, June 16, 2020, https://www.washingtonpost.com/outlook/2020/06/16/mock-trump-hurts-disabled/. Congressman Ted Lieu (D-CA) dubbed his thirteen-second re-enactment his "first campaign ad." See Catherine Garcia, "Rep. Ted Lieu Mocks Trump for Showing He Can Drink a Glass of Water with 1 Hand," The Week, June 21, 2020, https://theweek.com/speedreads/921360/rep-ted-lieu-mocks-trump-showing-drink-glass-water-1-hand.

The distance between the responses to these two scenes—moral condemnation on the one hand, mockery on the other—forms the backdrop of this dissertation. Illustrating the enduring perception of disabled people as pitiable, childlike, and in need of protection, the response to Trump's mocking of Kovaleski and the subsequent refusal to grant Trump the same solicitude when he, too, was mocked, speaks to the prescribed roles to which disabled people must still conform. Trump—loud, bigoted, racist, and needlessly cruel to anyone with whom he disagrees—clearly does not fit this paradigm. Kovaleski, a Pulitzer Prize-winning journalist at the *New York Times,* fits it only to the extent that he remains a nameless, powerless, "disabled journalist."[13] This is not to suggest that Trump deserves our sympathy or forgiveness. Indeed, as a number of disability rights activists and commentators have argued, the nearly-obsessive focus on Trump's physical and mental fitness for office—and the implication that his erratic behavior is the result of dementia or mental decline—risks absolving him of full responsibility for his actions.[14] Rather, I mean to highlight the enduring perception of disability as what disability studies scholar Rosemarie Garland-Thomson refers to as an "inadequacy or catastrophe to be compensated for with pity or good will."[15] The problem is not simply that this perception is incorrect—as Garland-Thomson argues—but rather that its persistence has made it such that we (and by "we" I mean disability studies scholars and activists) remain stuck in a defensive

[13] This rhetoric of powerlessness was especially pronounced in the wake of Meryl Streep's 2017 Golden Globes acceptance speech, in which she referenced Trump's "performance," describing Kovaleski as "someone he [Trump] outranked in privilege, power, and the capacity to fight back." See "Meryl Streep's Speech Was Patronizing to People with Disabilities," *The 180* (CBC Radio, January 11, 2017), https://www.cbc.ca/radio/the180/what-not-to-love-about-meryl-streep-s-speech-more-on-ptsd-and-violence-and-reform-politics-not-elections-1.3930068/meryl-streep-s-speech-was-patronizing-to-people-with-disabilities-1.3930082.
[14] Cokley, "Calling Trump Unwell Doesn't Hurt Trump. It Hurts Disabled People"; David Perry, "Use Streep Uproar to Get Real on Disability," CNN Opinion, January 9, 2017, https://www.cnn.com/2017/01/09/opinions/streep-trump-real-talk-perry-opinion/index.html; Pulrang, "In the World of Disability, Outrage Comes Naturally, but Action Endures."
[15] Rosemarie Garland-Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1996), 24.

posture, prevented from fully appreciating the many and often contradictory ways that disability operates not only as a site of exclusion, opposition, or fascination, but as constitutive of and central to the very terms of political inclusion.

This dissertation attends to the ways in which the boundaries and defining features of political membership are stabilized and recast in and through disability. Where existing research emphasizes the exclusionary ground of liberal citizenship and its consequences for people with disabilities, I argue that disability as a concept, legal category, and medical condition has become a crucial mechanism through which to negotiate the obligations and entitlements of citizenship. Departing from efforts to trace (and thus to refute) the overdetermination of disability as deficit or lack, I recover alternative figurations and deployments of disability, paying particular attention to their function in suturing—or, more recently, rupturing—the persistent link between work and citizenship. At once a social obligation *and* the primary means by which we access certain rights and benefits critical to the exercise of full citizenship, work offers, I argue, a unique lens through which to examine the changing contours of political membership. Tracing an historical arc from the rise of industrial capitalism and the abolition of slavery through to the postindustrial present, I show how disability has been called upon at moments of crisis or rupture in the meaning and significance of work to resolve the tension between the ideal of work and the conditions of its performance.

Although I am trained primarily as a political theorist, this dissertation draws upon the work of scholars in a range of adjacent disciplines, including feminist theory, American political development, labor and legal history, and, most prominently, disability studies. Addressing a critical absence of work on disability in political theory (as well as in political science more generally) this dissertation joins a small but growing body of scholarship that has turned to

disability as a resource for addressing some of the central questions in political theory concerning political membership, citizenship, equality, justice, rights, and obligation (among others).[16] Specifically, it argues for disability not simply as a "useful category of…analysis," (to borrow a phrase from Joan Scott) or as an addendum to other categories of social and political marginalization and exclusion—such as race, gender, or class—but rather as central to our understanding of political membership and belonging.[17] At the same time, this dissertation is not simply an exercise in convincing political theorists to take disability seriously as a topic of scholarly enquiry, but also, and equally, an invitation to disability studies scholars to draw upon the conceptual resources offered by political theory for thinking through the issues and dilemmas central to their own investigations.

Writing in 1993, political scientist Harlan Hahn reflected on the potential "reciprocal impact" of disability studies and political science, suggesting that their conjunction could "expose significant anomalies in either or both of these fields" that could, in turn, "lead[] to revolutionary changes that may require disability to become an integral facet of the study of political science and politics to become an essential component of the assessment of disability."[18]

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[16] See, for example: Barbara Arneil, "Disability, Self Image, and Modern Political Theory," *Political Theory* 37, no. 2 (2009): 218–42; Barbara Arneil and Nancy J. Hirschmann, *Disability and Political Theory* (Cambridge University Press, 2016); Nancy J Hirschmann, "Disability Rights, Social Rights, and Freedom," *Journal of International Political Theory* 12, no. 1 (2016): 42–57; Nancy J. Hirschmann, "Diderot's Letter on the Blind as Disability Political Theory," *Political Theory* 48, no. 1 (February 2020): 84–108; Claire Colleen McKinney, "Ethics and Political Judgment in Feminist Abortion Politics" (Ph.D., United States -- Illinois, The University of Chicago, 2014), http://search.proquest.com/pqdtglobal/docview/1559348751/abstract/B0A0382CE6FC4DAEPQ/14; Stacy Clifford Simplican, *The Capacity Contract: Intellectual Disability and the Question of Citizenship* (U of Minnesota Press, 2015).

[17] Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* 91, no. 5 (1986): 1053–75, https://doi.org/10.2307/1864376. To be clear, I do not mean to suggest in quoting Scott that she sees gender as another category of exclusion alongside race and class. Indeed, she makes a powerful case for questioning "how…gender give[s] meaning to the organization and perception of historical knowledge" (1055). Rather, my perhaps unfair objection here is more to the idea of gender as a "useful" rather than, say, central category of analysis.

[18] Harlan Hahn, "The Potential Impact of Disability Studies on Political Science (as Well as Vice-Versa)," *Policy Studies Journal* 21, no. 4 (Winter 1993): 740.

Unfortunately, this invitation to further study has, for the most part, gone unheeded. Indeed, many of the issues Hahn mentioned—the absence of work on disability in prominent disciplinary journals and the hostility of many of the dominant paradigms to the dilemmas raised by disability—remain as true today as they were nearly thirty years ago.[19] While I do not pretend to solve this problem, my hope is that this dissertation goes some way toward convincing both political theorists and disability studies scholars of the value of cross-collaboration.

Figures of Otherness

Attention to narrative and figural representations of disability is familiar territory for disability studies scholars, especially those working in the humanities and humanistic social sciences. Literary and metaphoric uses of disability have received particular scrutiny for their tendency to "invoke, reiterate, and…reinforce[]…cultural stereotypes."[20] Appearing as "icon[s] of monomaniacal revenge" (Ahab), depraved villains (Richard III), or as "indexes of *everyone else's* moral standing" (Tiny Tim, Boo Radley, and, perhaps, Serge Kovaleski), disabled characters are often made reducible to the moral traits signified by their particular infirmities.[21]

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[19] Indeed, as Barbara Arneil and Nancy Hirschmann observe in their recent edited volume on Disability and Political Theory, "Political science has…has fallen behind other disciplines in analyzing disability in our society….While philosophers, historians, sociologists, and literary scholars have all recognized the importance of disability to their disciplinary inquiries, political theory has for the most part ignored disability as category of scholarly inquiry. The pre-eminent journal in the field, *Political Theory*, has published only one article on disability….The *American Political Science Review*, the flagship journal in the discipline, has published no articles no articles from a theoretical perspective" (or, I would add, from an empirical or descriptive perspective). See Barbara Arneil and Nancy J. Hirschmann, "Disability and Political Theory: An Introduction," in *Disability and Political Theory*, ed. Barbara Arneil and Nancy J. Hirschmann (New York: Cambridge University Press, 2016), 1. Since the publication of their volume in 2016, *Political Theory* has published an additional article by Hirschmann. See Hirschmann, "Diderot's Letter on the Blind as Disability Political Theory."

[20] Garland-Thomson, *Extraordinary Bodies*, 11.

[21] Garland-Thomson, 11–12; Michael Bérubé, "Disability and Narrative," *PMLA* 120, no. 2 (March 2006): 569–70. See also Lennard J. Davis, "Crips Strike Back: The Rise of Disability Studies," *American Literary History* 11, no. 3 (1999): 500–512. As David Mitchell and Sharon Snyder observe, "Filmic"—and, I would argue, literary—"narratives rely upon an audience's making connections between external 'flaws' and character motivations in a way that insists upon corporeal differences as laden with psychological and social implications." See David T. Mitchell and Sharon Snyder, *Narrative Prosthesis: Disability and the Dependencies of Discourse* (Ann Arbor, MI: University of Michigan Press, 2000), 96.

Deconstructing these representations, disability studies scholars—most prominently Rosemarie Garland-Thomson, David Mitchell, and Sharon Snyder—have attempted to "reframe[e] disability as another culture-bound, physically justified difference to consider along with gender, class, ethnicity, and sexuality."[22] This project of "denaturaliz[ation]" has, in turn, provoked further reflection on how these so-called "figures of otherness" inform—and are informed by—normative ideals of physical and mental fitness and ability.

Part of the task of this scholarship, then, has been to not just challenge these figures and their cultural force, but to reveal the contingent relationship between physical and mental differences (Ahab's peg leg, King Richard's hunched back) and the meanings that get attached to these differences (monomaniacal revenge, villainy). These meanings, Garland-Thomson reminds us, "reside not in inherent physical flaws, but in social relationships in which one group is legitimated by possessing valued physical characteristics and maintains its ascendancy and its self-identity by systematically imposing the role of cultural or corporeal inferiority on others."[23] If literary and artistic depictions of disability are often overdrawn—disabled characters "engulfed by a single stigmatic trait"—they nevertheless help to clarify the distinction between bodily difference and its ideological interpretation.[24] Highlighting this relationship, then, not only exposes the instability of the "privileged norm" that the disabled figure works to uphold, but also opens up new avenues from which to challenge the continued dominance of this norm.[25]

Although careful not to overstate the liberatory potential of the "extraordinary body," Garland-Thomson nevertheless argues for what she refers to as "an antiassimilationist, politicized rhetoric of difference" that contests the terms by which certain bodies are judged to

[22] Garland-Thomson, *Extraordinary Bodies*, 5.
[23] Garland-Thomson, 7.
[24] Garland-Thomson, 11.
[25] Garland-Thomson, 5.

be inferior, deviant, or monstrous.[26] Excavating this "subdued counternarrative," then, becomes a way of inverting and thus refuting the demand for conformity; offering "affirmative representational forms" of disability in its steed.[27] "[F]reed from…[their] negative connotations," these figures of disability pose a unique challenge to "ideologies of self-reliance, autonomy, [and] progress" that define the American liberal tradition.[28]

Countering these negative representations of disability, David Mitchell and Sharon Snyder have likewise explored the "transgressive potential" of disability and its capacity to reveal the instability and mutability of social ideals and norms.[29] Tracing what they refer to as the "rhetorical history of disability," and the means by which mental and physical differences have been made synonymous with "cultural undesirability…[and] human disqualification," they show how disability has come to function within narrative art not simply as an icon of deviance and devaluation, but also as a disruptive, unsettling, and transgressive force.[30] They are nevertheless careful to insist that while these depictions are not unrelated to the treatment of actually existing disabled people, this relationship is more fraught than it might first appear. No "mere reflection" of its rhetorical deployment, the reality of corporeal and cognitive difference is afforded few of the transformative capacities granted to its literary and artistic counterparts. Indeed, "while literature often relies on disability's transgressive potential, disabled people have been sequestered, excluded, exploited and obliterated on the very basis of which their literary representation so often rests."[31] Attending to the ways in which disability is deployed in narrative art while bearing in mind this disjuncture between narrative figurations of disability and social

[26] Garland-Thomson, 105.
[27] Garland-Thomson, 113.
[28] Garland-Thomson, 114, 16.
[29] Mitchell and Snyder, *Narrative Prosthesis*, 6, 8.
[30] Mitchell and Snyder, 1, 3.
[31] Mitchell and Snyder, 8.

attitudes toward disabled people, they approach these representations as sites of "discursive investment" in which anxieties about social change—progress, as well as decline—are played out.[32] It is by "attend[ing] to the nuanced relations of literary and social responses to disability," they conclude, that we can not only "reclaim[] histories of disability," but also "seize a more variegated and politicized disabled subjectivity for our own era."[33] Although often critiqued for their failure to adequately attend to the lived experience of disability (as opposed to its representation in literature and the arts), these attempts to both recover disability from what Mitchell and Snyder refer to as its "representational association with deviance," *and* to revel in the transgressive possibilities that such "recalcitrant deviance" affords, have been crucial to both understanding *and* challenging the social perception and treatment of people with disabilities.[34]

Taking their cue from this work, a handful of political theorists have turned their attention to the underappreciated function of disability in defining, through its negation and disavowal, the rational, independent, and able-bodied citizen that sits at the heart of liberal and republican theory. For Barbara Arneil and Nancy Hirschmann especially, this has meant attending to the "negative images" of disability that populate canonical texts (e.g. Locke's "Lunaticks and Ideots" Hume's "species of creature…possessed of such inferior strength, both of body and mind," and Kant's "imbeciles") in an effort to bring to light their underappreciated significance in shaping the way we think about central concepts like equality, justice, freedom,

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[32] Mitchell and Snyder, 2.
[33] Mitchell and Snyder, 9, 10.
[34] Mitchell and Snyder, 9. For analyses of the failure of this literature to adequately account for actually existing disabled people, see Bérubé, "Disability and Narrative"; Carol Breckenridge and Candace A. Vogler, "The Critical Limits of Embodiment: Disability's Criticism," *Public Culture* 13, no. 3 (Fall 2001): 349–57; Kim Q. Hall, "Feminism, Disability, and Embodiment," *NWSA Journal* 14, no. 3 (Autumn 2002): vii–xiii; Judy Rohrer, "Toward a Full-Inclusion Feminism: A Feminist Deployment of Disability Analysis," *Feminist Studies* 31, no. 1 (2005): 34–63; Tobin Siebers, "Disability and the Theory of Complex Embodiment: For Identity Politics in a New Register," in *The Disability Studies Reader*, ed. Lennard J. Davis, 5th ed. (New York: Routledge, 2017), 313–32; Sharon L. Snyder and David T. Mitchell, "Re-Engaging the Body: Disability Studies and the Resistance to Embodiment," *Public Culture* 13, no. 3 (September 1, 2001): 367–89.

and personhood.[35] Thinkers like Locke, Hume, and Kant did "not simply passively exclude people with disabilities from their key concepts," Arneil observes; rather, they "use[d] them to constitute the boundaries of these same concepts."[36] And it is only by attending to these constitutive exclusions, negations, and oppositions, she argues, that we can begin the essential task of "incorporat[ing] new meanings of disability into contemporary political theory."[37]

But what does it mean to offer new meanings or definitions of disability within a discipline whose central categories are built on its very disavowal? And what, further, is the connection—if there is a connection—between these new meanings and the achievement of greater equality and inclusion of disabled people toward which these interventions are presumably aimed? As Arneil and Hirschmann explain, part of the task of revealing the "ableist assumptions" that underlie "key concepts in the modern canon" entails making the case for disability as a neglected, but critically important, area of study within political theory. Modelling this approach on earlier efforts by feminist political theorists to call attention to the gendered exclusions that subtend the category of the citizen, those few political theorists who have turned to disability have likewise seen disability as the irrational, dependent, and excluded other against whom the rational, able-bodied citizen is constructed. "These exclusions," argue Arneil and Hirschmann, "established a binary between the rational and physically able autonomous public citizen with rights governed under the principle of freedom, equality, and justice…[and] the mentally and/or physically disabled dependent person with needs governed under the principle of

[35] See Barbara Arneil, "Disability in Political Theory versus International Practice: Redefining Equality and Freedom," in *Disability and Political Theory*, ed. Barbara Arneil and Nancy J. Hirschmann (New York: Cambridge University Press, 2016), 20–42; Arneil, "Disability, Self Image, and Modern Political Theory"; Arneil and Hirschmann, "Disability and Political Theory: An Introduction"; Nancy J. Hirschmann, "Disabling Barriers, Enabling Freedom," in *Disability and Political Theory*, ed. Barbara Arneil and Nancy J Hirschmann (New York: Cambridge University Press, 2016), 99–122.
[36] Arneil, "Disability in Political Theory Versus International Practice," 24.
[37] Arneil, "Disability, Self Image, and Modern Political Theory," 228.

charity."[38]

In many ways, the disabled other *has* served (and, indeed, continues to serve) as a boundary figure that, like women, immigrants, and other "others," provides coherence to "the rational and physically able autonomous public citizen" that lies at the heart of both liberal and republican thinking.[39] And yet, while I remain indebted to this scholarship and especially to its efforts to call attention to disability as a valid and viable topic of political-theoretic investigation, part of the task of this dissertation is to challenge what I argue is the tendency of these approaches to treat the citizen and the irrational or disabled other as oppositional categories, with disability primarily functioning as that which stands outside and lends coherence to the rights-bearing modal subject. This is not to discount the importance of efforts to expose the exclusionary structures and "ableist assumptions" that undergird concepts like citizenship, freedom, and independence, nor to dismiss the crucial work of excavating the many (and often veiled) ways that disability appears in canonical texts. It is instead to suggest that the significance of disability to political theory is not exhausted by its function in anchoring the binaries between autonomy and dependence, rationality and irrationality, or rights and charity. Indeed, I would argue that the difficulty entailed in offering "new meanings" and definitions of disability (as Arneil and Hirschmann suggest we do) is due in no small part to the productive—and not merely oppositional—role played by disability in figuring "key concepts in the modern canon."[40]

Reflecting on feminist re-readings of canonical texts in political theory, Linda Zerilli notes the tendency of this scholarship to "cast woman as a perennial outsider to public life"—

[38] Arneil and Hirschmann, "Disability and Political Theory: An Introduction," 8.
[39] Arneil and Hirschmann, 8.
[40] Arneil and Hirschmann, 7.

"the radical social other" who remains "outside the margins…[or] at the margins of the political."[41] Offering an alternative approach that foregrounds the instability and ambiguity of the concept of woman, Zerilli instead "examin[es] woman as she is produced symbolically and deployed rhetorically in theoretical interventions into…highly charged discursive arenas of political contestation."[42] "Neither wholly inside nor wholly outside political space," woman is, for Zerilli, a "frontier figure" whose "instability" and even "disorder" both defines and unsettles some of the central "claims of political theory."[43] Inspired by this approach, this dissertation looks to particular figures of disability—among them, the custodial inmate, the work-worn, and the lead-exposed child—to track the shifting boundaries and contested meanings of citizenship, work, and political inclusion as they evolved over the course of the nineteenth, twentieth, and twenty-first centuries. Insofar as these figures pose problems, or—in the language of this dissertation—dilemmas, for political theory, they also take on a productive role, at once sustaining, animating, even refashioning the meaning of political membership and inclusion in ways that exceed their function as the "abject social other" against which the myth (if not the reality) of the rational, independent citizen is constructed.[44] Rather than asking, first, how disability appears in the history of political thought; and second, what it would mean to replace the "limiting and depreciating" images of disability with ones that are more "inclusive," we would do better, I argue, to attend to the ways that disability as a *concept* has been deployed within political theory not just as the oppositional ground against which the white, rational, and typically male subject finds its bearings, but as a site around which political membership was

[41] Linda M. G. Zerilli, *Signifying Woman: Culture and Chaos in Rousseau, Burke, and Mill* (Ithaca, NY: Cornell University Press, 1994), 1.
[42] Zerilli, 2, 4.
[43] Zerilli, 2.
[44] Zerilli, 136.

negotiated and recast.[45]

The Terms of Citizenship

Before turning to consider the relationship between citizenship and disability, I should clarify what I mean by citizenship. This is no easy task. Indeed, citizenship, as Elizabeth Cohen reminds us, "has never been a unitary concept."[46] It is, Linda Bosniak agrees, "one of those 'keywords' in political language that are subject to much confusion and debate. Misunderstandings and disagreements abound about what citizenship is, where it takes place, and who exactly can claim it."[47] A formal legal status that confers membership in a national community, citizenship is also used more loosely to refer to the enjoyment of the rights and entitlements necessary to full membership in a community.[48] This latter meaning, elaborated by T. H. Marshall in his landmark 1949 essay, "Citizenship and Social Class," hints at the distance between what he describes as "the experience of being a citizen and *enjoying* citizenship" (my emphasis). To *enjoy* citizenship, Marshall stresses, is conditional upon more than just one's legal status. It implies, rather, the extension of rights as well as the means with which to exercise them.

Delineating three types of rights—civil, political, and social—and offering an evolutionary account of their development (from the extension of civil rights in the 18th century to social rights in the 20th), Marshall's tripartite distinction is particularly useful for thinking

[45] Arneil, "Disability, Self Image, and Modern Political Theory," 219.
[46] Elizabeth F. Cohen, *Semi-Citizenship in Democratic Politics* (New York: Cambridge University Press, 2009), 22.
[47] Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton, NJ: Princeton University Press, 2008), 12.
[48] Bosniak, chap. 2. According to Stuart Hall and David Held, "From the ancient world to the present day, citizenship has entailed a discussion of, and a struggle over, the meaning and scope of membership of the community in which one lives." See Stuart Hall and David Held, "Citizens and Citizenship," in *New Times: The Changing Face of Politics in the 1990s*, ed. Stuart Hall and Martin Jacques (New York: Verso, 1990), 175.

about the inequalities that persist even among those who enjoy formal citizenship and possess what he refers to as an "equal capacity for rights."[49] Where civil rights are "necessary to the maintenance of [the inequalities of capitalist society]…and indispensable to a competitive market economy," social rights, Marshall holds, do not (or, at least, should not) "depend on the economic value of the individual claimant."[50] Instead, they stem from a "attitude of mind" that betrays a commitment to the "equal social worth" of the individual as well as the alleviation of social inequality.

I return to Marshall's work here for several reasons. First, his distinction between the possession of rights and the conditions necessary for their enjoyment is useful for illuminating the central challenge posed by disability for the ways we commonly think about citizenship. Indeed, although few would argue that disabled people are *not* citizens in the formal, legal sense, the extent to which they can *enjoy* the benefits of this status or the equality it is meant to secure are highly variable. At a more concrete level, the tendency in the United States to link social rights to full employment has meant that the realization of these rights—to say nothing of their ability to "modify[] the whole pattern of social inequality"—has been severely limited.[51] If anything, the "basic conflict between social rights and market value" that Marshall identifies—but sees as diminishing by the mid-twentieth-century—has instead become more pronounced. For those outside the labor market, this often means exclusion not only from accessing these rights, but also from the full citizenship they are said to secure.[52]

As a means of financial support and a source of public respect, work is, Judith Shklar

[49] T. H. Marshall, "Citizenship and Social Class," in *Citizenship and Social Class and Other Essays* (New York: Cambridge University Press, 1995), 40.
[50] Marshall, 33, 43.
[51] Marshall, 47, 56.
[52] Marshall, 24.

writes, one of "the primary attributes of an American citizen."[53] I understand this statement to mean two things. The first, emphasized by Shklar, is the significance of paid employment to public standing and the ability to command respect from one's peers. Second, and relatedly, is the obligation to work as a condition of full citizenship. To be an American citizen, you *must* work.

Acknowledging that standing is a "vague" concept, Shklar takes it to imply a sense of one's "relative social place, defined by income, occupation, and education."[54] If this seems to run counter to the democratic ideal of equality, this is a tension that Shklar wishes to draw out. Indeed, the significance of work to American citizenship, for Shklar, derives at least in part from its earlier opposition to chattel slavery. "It is in the marketplace," she writes, "in production and commerce, in the world of work in all its forms, and in voluntary associations that the American citizen finds his social place, his standing, the approbation of his fellows, and possibly some of his self-respect."[55] "We are citizens," she continues, "only if we earn."[56]

Writing in 1991, Shklar might be forgiven for what in retrospect seems a rather too-romantic, and even nostalgic, view of the significance of work to one's sense of social and political belonging, particularly as we confront a world in which many of the rewards and benefits previously attached to work— among them, old age pensions, unemployment, and health insurance—are even *less* guaranteed than they were at the time of the book's publication. Nevertheless, I take her point to be this: For all that we may espouse a commitment to equality, our dedication to work betrays a different, less salutary reality—one that still bears the residue of

[53] Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, MA: Harvard University Press, 1991), 3. See also Kathi Weeks, *The Problem with Work: Feminism, Marxism, Antiwork Politics, and Postwork Imaginaries* (Durham, NC: Duke University Press, 2011), 6.
[54] Shklar, *American Citizenship*, 2.
[55] Shklar, 63.
[56] Shklar, 67.

a legacy of slavery (against which one's standing as a free, independent worker took on paramount importance). The "American work ethic…has endured," Shklar reminds us, at least in part "because the political conditions to which it responded…have not disappeared."[57]

Indeed, the ability to distinguish between the content of one's job and work as a "mark[] of civic dignity" has worked to the advantage of employers, who have shown themselves to be surprisingly adept at adapting this rhetoric to defend their reliance on low-wage labor. Observing that nearly "80 percent of people with disabilities do not have jobs," Jim Gibbons, the President and CEO of Goodwill Industries, maintains that paying legally-sanctioned subminimum wages to disabled employees—an issue I will take up in more detail in Chapter 1 and to which I will return in the conclusion—is permissible on the assumption that this work, however menial and poorly paid, provides "a sense of accomplishment…[and] self-respect." There is, he concludes, "an intrinsic value to working that cannot be denied."[58]

Capturing this distinction between the so-called "intrinsic value of work" and the content of one's job, legal scholar Kenneth Karst notes that while "the actual experience of work might be meaningless drudgery, might be degradation—might, in fact, be violence…the *idea* of work retains its strong connections with the liberty-oriented ideas of independence, self-expression, personal satisfaction, security, and even dignity."[59] Indeed, whatever its content, "work has been [and remains] one major arena in which America's basic constitutional values of liberty, equality, and national union have been either validated or frustrated."[60]

And yet, if work persists as the primary means for securing status and recognition, it is

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[57] Shklar, 64.
[58] Jim Gibbons, "Goodwill and the Power of Work: Helping People with Disabilities Find Employment," Huffington Post, May 17, 2013, https://www.huffpost.com/entry/goodwill-and-the-power-of_b_3293985.
[59] Kenneth L. Karst, "Coming Crisis of Work in Constitutional Perspective," *Cornell Law Review* 82, no. 3 (1997 1996): 538.
[60] Karst, 529.

also (and perhaps more importantly) a moral and civic obligation. Ensuring access to what is thought to be "good," stable, well-paying work is not only "the central goal of schooling," but also, as Nona Glazer notes, "a criterion of successful medical and psychiatric treatment, and an ostensible goal of most welfare policies and unemployment compensation programs."[61] "The worker," Nancy Fraser and Linda Gordon argue further, has "become the universal social subject: everyone is expected to 'work' and to be 'self-supporting.'"[62] To not work (whether one does so willingly or not) is often a source of shame, social disapprobation, and moral condemnation. Even the growth of low-wage, service-based, and often precarious employment has done little to challenge either the primacy of work or the "idea of work as an end in itself."[63] "Work," writes Kathi Weeks,

> is one of the primary means by which individuals are integrated not only into the economic system, but also into social, political, and familial modes of cooperation. That individuals *should* work is fundamental to the basic social contract; indeed working is part of what is supposed to transform subjects into the independent individuals of the liberal imaginary, and for that reason, is treated as a basic obligation of citizenship.[64]

To the extent that American citizenship is often defined in relation to labor and laboring capacity, then, the place of disability within this dynamic is not immediately clear. That is, at the same time that disability has become synonymous with dependency (and *economic* dependency in particular), it has also functioned historically alongside gender and race to secure the meaning of citizenship for the white, wage-earning men who were imagined as its ideal subjects. It is, to borrow a phrase from Nancy Fraser and Linda Gordon, the constitutive "underside of the workingman's independence," the other against which the ideal (male) worker-citizen was

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[61] Nona Y. Glazer, *Women's Paid and Unpaid Labor: The Work Transfer in Health Care and Retailing* (Philadelphia, PA: Temple University Press, 1993), 33.
[62] Nancy Fraser and Linda Gordon, "A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State," *Signs* 19, no. 2 (Winter 1994): 324.
[63] Weeks, *The Problem with Work*, 43.
[64] Weeks, 44, 8.

constructed.[65] From the perspective of those with disabilities, then, the centrality of work to ideas of citizenship and belonging presents a dilemma. Put simply: If work is not only a "central component of daily life," but also the primary means through which we access the social rights and benefits necessary to the exercise of full citizenship, where does that leave those cannot work or who are otherwise excluded from employment?

In the American context, at least, this dilemma has been partially (if not at all satisfactorily) resolved via the creation of means-tested public assistance programs like Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI) which provide financial assistance and related support services to families and those with work-limiting disabilities, respectively. Recalling the older private charity tradition from which these need-based programs descended, critics of public assistance have, at least until recently, directed most of their moral condemnation at the black, single mothers (wrongly) assumed to make up a majority of TANF recipients—against whom disabled SSI recipients appear morally blameless and thus more "deserving" of aid (although this, too, is up for contestation).[66]

Describing this distinction between employment-based social rights and benefits and need-based public assistance programs, Nancy Fraser and Linda Gordon observe that many of the debates over their virtues and drawbacks have "been framed in terms of…[a] contract-versus-charity opposition." On this reading, employment-based contributory programs like Social Security Disability Insurance (SSDI) are thought to operate on a contractual basis, with recipients "paying in" what they will eventually withdraw from the program. Conversely, public assistance programs like TANF and SSI are understood as charitable aid, or "welfare," with recipients depending on the taxes of their employed brethren. Arguing that no solution to the

[65] Fraser and Gordon, "A Genealogy of Dependency," 318.
[66] Fraser and Gordon, 321.

"welfare problem" will be forthcoming so "long as we remain trapped within this opposition," they call on their readers to "re-imagine civil citizenship in a less property-centered, more solidaristic form."[67] While Fraser and Gordon do not elaborate upon what this "less property-centered, more solidaristic" citizenship might entail, we might instead begin by asking what is at stake in maintaining the distinction between contract and charity-based services, and what role disability plays in its persistence.

Indeed, it is my contention that disability—and, in particular, the *perception* of disabled people as the proper and morally deserving objects of charity (here we might recall Serge Kovaleski)—is crucial to sustaining this distinction and, in so doing, to concealing the vital function of disability not just as the inverse of the capacity to engage in "substantial gainful activity," but as an expected (and even essential) consequence of wage labor. Exposing this relationship is vital, I argue, to both challenging the persistent perception of disabled people as objects of charity whose concerns are not, properly speaking, "political" (recall Kovaleski) *and* to confronting an economic reality in which work—its primacy, as well as the rights and benefits it conferred—is no longer guaranteed.

Building upon, but ultimately departing from, existing work in disability studies that understands the relationship between disability and work to be primarily oppositional, I offer an alternative interpretation of this dynamic. Where this scholarship locates the origins of disability exclusion in the rise of industrial capitalism, urbanization, and the breakdown of local and familial care networks, I recover the underappreciated significance of disability for mediating concurrent transformations in the meaning of work and its relationship to political belonging.[68]

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[67] Nancy Fraser and Linda Gordon, "Contract Versus Charity: Why Is There No Social Citizenship in the United States?," *Socialist Review* 22 (1992): 65.

[68] I will address this argument in much more detail in the first chapter, but for an overview of this interpretation, see: Victor Finkelstein, *Attitudes and Disabled People: Issues for Discussion* (New York: International Exchange of

The dual role of work as both an obligation of citizenship *and* one of the (if not *the*) primary means of securing social status and esteem makes it especially useful for tracking transformations in the meaning of citizenship and the terms of political belonging. If work—both the idea(l) and its actual performance—is "an essential component of full citizenship," this relationship requires effort to maintain.[69]

Rather than viewing disability in opposition to work, then, I instead trace how the concept of disability is called upon to sustain and reinforce the figure of citizen-earner against its destabilization. Looking to three moments in which the relationship between work and citizenship was being renegotiated—the free labor ideal and the rise of wage labor in the aftermath of the Civil War, the industrial accident crisis of the early 20th century, and, more recently, the Flint, Michigan water crisis—I illuminate the role of disability not just in maintaining, but also in recasting the relationship between work and political membership.

Chapter Outline

Beginning with debates over the meaning of work and its relationship to citizenship, the first chapter considers the significance of disability and disabled labor to the continued salience of the free labor ideal in the period following the Civil War. Building upon, but ultimately departing from, disability studies scholars who have traced the emergence of physical and mental

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Information in Rehabilitation, 1980); Kim E Nielsen, *A Disability History of the United States* (Boston, MA: Beacon Press, 2012); Michael Oliver, *The Politics of Disablement: A Sociological Approach* (London: Macmillan, 1990); Mike Oliver, "Disability and Dependency: A Creation of Industrial Societies," in *Disability and Dependency*, ed. Len Barton (New York: Taylor & Francis, 1989), 7–22; Sarah F. Rose, *No Right to Be Idle: The Invention of Disability, 1840s–1930s* (Chapel Hill, NC: University of North Carolina Press, 2017); Alan Roulstone, "Disability, Work, and Welfare: The Disappearance of the Polymorphic Productive Landscape," in *Disabled People, Work, and Welfare: Is Employment Really the Answer?*, ed. Chris Grover and Linda Piggott (Bristol, UK: Policy Press, 2015), 257–74.

[69] Jennifer Gordon and R. A. Lenhardt, "Rethinking Work and Citizenship," *UCLA Law Review* 55, no. 5 (2008 2007): 1168.

difference as an object of political, social, and medical concern to industrialization and the changing social conditions that accompanied the rise of capitalism, I look to the history of institutional and sheltered labor to show how the "ideal" disabled worker came to incorporate those qualities deemed most at odds with the continued ideological salience of the free, independent, citizen-worker. If Industrialization coincided with the expansion of custodial institutions meant to confine disabled people *away from* the rest of society, the emergence of disability as a clinical and administrative category also worked to conceal the centrality of disability and disabled labor to the construction of the docile, regimented worker-subject of industrial capitalism. Far from ancillary to the figure of the citizen-worker, disability—its exclusion as well as its reflection in the industrial worker—helped sustain work as a defining feature of republican citizenship even amidst transformations in the conditions of its performance.

Turning, in the second chapter, to the industrial accident crisis of the early twentieth century, I examine how negotiations over the meaning of disability helped to define some disabilities in opposition to work while normalizing others as an essential, if unacknowledged, aspect of the employment relationship. Confronting the reality (and likely permanence) of the wage labor society, workers during this period struggled to come to terms with the degradation of work and its consequences for the meanings and responsibilities that attached to male citizenship. If the reformulation of freedom as contract had helped resolve the contradiction between wage earning and the ideal of free labor, the accident crisis threatened to disrupt this delicate balance. Exposing the thinness of the independence secured through industrial wage work, accidents and their economic consequences posed a distinct problem for efforts to preserve the dignity of the (male) worker. Where previous scholarship has focused on the legal

innovations that emerged in response to the crisis and their impact on the evolution and diffusion of managerial practice, I see the accident crisis as a site around which the *meaning* of disability and its relation to work was being negotiated and redefined. Set against a broader preoccupation with devising complex systems of diagnosis and classification—through which medical professionals and reformers attempted to control the deviant, feeble-minded, and epileptic—efforts to redefine what "counted" as a compensable workplace disability were about more than just the limits of corporate responsibility. Rather, these debates evinced broader anxieties about the changing nature of work—both the increasing dominance of wage labor and the rise of new managerial techniques, as well as the worry that these transformations posed a distinct threat to the dignity of work and, by extension, to white masculinity.

Where the first two chapters focus on events at the height of America's industrial period, the third and final chapter—which turns to the Flint, Michigan water crisis—might be best located in its wake. If this seems chronologically out of step with the rest of the dissertation, my intent in drawing upon a more contemporary example is to highlight the breakdown of the balance forged in the first two chapters in which disability was used to both define and sustain the figure of the citizen-worker against its destabilization. What we are seeing in Flint, I argue, is not only a radical shift in the *meaning* of work as a central organizing feature of citizenship, but also the failure of the systems and institutions whose smooth functioning relied not only on a robust industrial economy, but also on the conceptual distinction between work and disability that this economy helped sustain. Where existing scholarship on Flint has tended to view the crisis predominantly (if not exclusively) as the result of neoliberal policies, I instead situate the crisis and its physical consequences within the longer history of Flint's rise to industrial dominance as well as its more recent demise. Doing so, I argue, allows us to see the ways in

which disability has emerged as one of the few remaining avenues for securing what were once public goods. Coming in the wake of the social and economic transformations that defined the conditions of the first two chapters; the lead in the water indexes both the residues of a bygone era of industrial dominance *and* the more recent triumph of neoliberal governance and market rationality. The proliferation of disability claims in this context suggests not only an absence of other means of redress, but also a breakdown in what in earlier chapters was an ability to harness disability for the purposes of maintaining work as a condition of political membership.

Chapter 1: "They Attend Strictly to Their Own Business": Disability as Industrial Asset

Introduction

Speaking at a May 1897 meeting of the Church Association for the Advancement of the Interests of Labor, Henry C. Potter, the Bishop of New York, decried the mental and intellectual effects of machinery on the industrial laborer. The machine, he warned, "is doing away with intelligence in labor. It is turning the laboring man into a simple idiot." Faced with the monotony of his toil, it was "no wonder that at night time he drank, gambled, and fought. He had to; otherwise he would go mad."[1] Potter's comments, interpreted as an outright attack on "labor-saving machinery"—if not the very idea of progress—prompted a flurry of rebuttals.[2] The average male factory employee, the *New York Times* pointed out, was not only making more than his father, but his "work is easier, his hours are shorter…and the things he has to buy are cheaper." Indeed, it was not the worker that ought to be pitied, but the capitalist: "Badgered by political anti-trust bills, brought to the verge of bankruptcy, his income diminished by low prices and checked by high wages," the capitalist, the *Times* mused, "is in no condition to look down on this young machine tender." In fact, "he might well envy him."[3] Acknowledging the monotony of "the work performed in almost any factory," the *Washington Post* wryly observed that so long

[1] "Bishop Potter Condemns Machinery," *The New York Times*, May 6, 1897. Potter's comments are mentioned briefly in Daniel T. Rodgers, *The Work Ethic in Industrial America 1850-1920*, 2nd Edition (The University of Chicago Press, 2014), 68.
[2] In addition to the examples discussed below, see "Bishop Potter and 'Machinery,'" *Chicago Daily Tribune*, May 9, 1897; William Dillon, "Bishop Potter and Machinery," *Chicago Daily Tribune*, May 16, 1897; Starr Hoyt Nichols, "Men and Machinery," *The North American Review* 166, no. 498 (1898): 602–11. For a more positive response, see "Scoffing at the Truth," *Locomotive Firemen's Magazine* 23, no. 1 (July 1897): 41.
[3] "Bishop Potter Condemns Machinery."

as Potter's "laboring man" could still manage to gamble and fight, he could hardly be exhausted by his labor.[4]

Of course, Potter's claims regarding the "utter monotony" of mechanized labor and its moral and intellectual effects on the industrial worker were hardly new. Indeed, as he himself would point out in his response to his critics published later that year in the *North American Review*, similar observations had already been made by Adam Smith, J. A. Hobson, and R. Whately Cooke Taylor—all men with far more experience in factories than he possessed.[5] But even this defense was judged insufficient, as neither he nor any of the thinkers he mentioned could claim to speak for the workers themselves. Had these men thought to inquire after the "bicycle makers, or the sewing machine makers, or the glass makers, or the garment makers," observed Connecticut preacher and poet Starr Hoyt Nichols, "they would have heard that monotonous work, being easy, relieved the strain of mind and body which hard labor entailed." And it was the freedom afforded by this monotony that enabled the worker to broaden their horizons beyond the shop floor. The worker, Hoyt Nichols continued, is "more acute, not less; more reasoning, not less; more interested in life and not less, than those whose industries are more various and interesting." Indeed, "day laborers and farm hands," though "they change the form of their work every few minutes…mak[e] no progress, rising little in the scale of their work, or their capacity of affairs, or their wage-earning power."[6]

This shift in focus from the content of one's job to the possibilities it afforded off the clock are indicative of broader transformations in the significance of work and the meaning of free labor that occurred in the wake of the Civil War.[7] Long an orienting feature of republican

[4] "The Machines, the Capitalist, and the Workingman," *The Washington Post*, May 9, 1897.
[5] Henry Codman Potter, "Men and the Machine," *The North American Review* 165, no. 491 (October 1897).
[6] Nichols, "Men and Machinery," 603, 604, 603.
[7] Nancy Fraser and Linda Gordon note the ways the "reinterpret[ation] [of] the meaning of wage labor…required a

self-understanding, free labor and the figure of the independent, white, male producer loomed large in antebellum thinking. Set in contrast to the English law of master and servant, on the one hand, and the specter of chattel slavery, on the other, free labor in the post-Revolutionary period was defined by an emphasis on economic independence, personal autonomy, and self-ownership. Wage labor, in contrast, was a relation of dependence and subordination, and though not yet dominant at midcentury, was judged antithetical to republican liberty.[8] Captured in the figure of the hireling, this dependence was not merely economic, but implied a particular bearing toward—and deference to—one's employer. To work for wages was, Daniel Rodgers writes, to "labor[] at the will and for the profit of another."[9] It was, finally, to be "unworthy of the standing and responsibilities of full membership in community life."[10]

Insofar as the Civil War was "a war for the establishment of free labor," what free labor meant in the wake of emancipation wasn't entirely clear.[11] If some abolitionists saw in the employment contract the "antithesis of the 'traffic in bodies and souls of men and women,'" this stood at odds with an earlier emphasis on property ownership and small-scale production. Without the opposing presence of slavery, the indignities and "utter monotony" of wage labor were brought into full view, raising the question of how free labor might be recast (or, indeed, *if* it could be recast) in accordance with a rapidly industrializing society.

In tracking post-bellum transformations in the meaning of free labor, historians often

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shift in focus—from the experience or the means of labor (e.g. ownership of tools or land, control of skills, and the organization of work) to its remuneration and how that was spent." See Fraser and Gordon, "A Genealogy of Dependency," 315.

[8] Lawrence B. Glickman, *A Living Wage: American Workers and the Making of Consumer Society* (Ithaca, N.Y.: Cornell University Press, 1997). As Glickman observes, "most antebellum workers placed wage labor with slavery along a continuum of bondage" (157).

[9] Rodgers, *The Work Ethic in Industrial America*, 31.

[10] William E. Forbath, "Caste, Class, and Equal Citizenship," *Michigan Law Review* 98, no. 1 (October 1999): 20.

[11] Edward Atkinson quoted in Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War*, 2nd ed. (New York: Oxford University Press, 1995), xxxiii.

stress the increasing acceptance of wage labor as a life-long—rather than transitory—condition. Two themes emerge in this literature. First is the increasing identification of freedom with contract—a shift facilitated in part by the fight against slavery and the significance of contract to ideas of self-ownership. The second, evident in Hoyt Nichols's response to Potter, was a growing emphasis on the freedoms afforded by wage labor as an answer to the often-degrading conditions in which this labor was performed—what Leon Fink describes as "the shift from producerism to consumerism."[12] Left underexplained in both accounts are the means by which the tension between a free labor ideology that centered the "autonomous small producer" and the increasing dominance of wage labor was resolved.[13] Where scholars such as Pamela Brandwein and Amy Dru Stanley recover more capital-friendly accounts of free labor that could be made congruent with wage labor, the question still remains as to how this embrace of the "Northern wage system" as it stood in the 1860 could be stretched to accommodate the rise of the large-scale industrial factory.[14]

In this chapter, I trace a parallel account of this transformation, illuminating the significance of disability and disabled labor to the continued salience of the free labor ideal in the period following the Civil War. Building upon, but ultimately departing from, historical accounts that trace the emergence of physical and mental difference as an object of political, social, and medical concern to industrialization and the changing social conditions that accompanied the rise

[12] Leon Fink, "From Autonomy to Abundance: Changing Beliefs about the Free Labor System in Nineteenth-Century America," in *Terms of Labor: Slavery, Serfdom and Free Labor, Stanford*, ed. Stanley L. Engerman (Stanford, CA: Stanford University Press, 1999), 130.
[13] Foner, *Free Soil, Free Labor, Free Men*, xvii.
[14] Pamela Brandwein, "The Labor Vision of the Thirteenth Amendment, Revisited Symposium: The Original Meaning and Continuing Relevance of the Thirteenth Amendment: Papers," *Georgetown Journal of Law & Public Policy* 25 (2017): 13–58; Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998); Amy Dru Stanley, "Wages, Sin, and Slavery: Some Thoughts on Free Will and Commodity Relations," *Journal of the Early Republic* 24, no. 2 (2004): 279–88.

of capitalism, I show how the "ideal" disabled worker came to incorporate those qualities deemed most at odds with the continued ideological salience of the free, independent, citizen-worker.[15] If industrialization coincided with the expansion of custodial institutions meant to confine the disabled *away from* the rest of society, the emergence of disability as a clinical and administrative category also worked to conceal the centrality of disability and disabled labor to the construction of the docile, regimented worker-subject of industrial capitalism. In other words, the widespread exclusion of disabled people from paid workforce and their relegation to public dependency only tells part of the story. Far from ancillary to the figure of the citizen-worker, disability—its exclusion as well as its reflection in the industrial worker—helped sustain work as a defining feature of republican citizenship.

In order to make this connection, I look to the many and varied forms of labor performed by inmates of institutions for the blind, deaf, and "feeble-minded"—a catch-all term referring to a broad range of physical and intellectual impairments. Tracing the evolution of disabled labor as it emerged in institutions for the blind and deaf in the mid-nineteenth century, I show how what was initially conceived as a gateway to competitive (that is, noninstitutional) employment, became, by the turn of the twentieth century, a means of securing the "permanent sequestration of the entire body of feeble-minded."[16] Although historians of disability have often noted the discontinuity between the exclusion of people with disabilities from paid employment and the increasing reliance of custodial institutions on the unpaid labor of their inmates, little has been said about how these developments related to broader efforts to adjust free labor ideals to the "wage-system of labor."[17] Defining the limits of what counted as work, the rhetoric used to

[15] Roulstone, "Disabled People, Work, and Welfare," 261.
[16] James C. Carson (superintendent for the New York State Asylum for idiots), quoted in Rose, *No Right to Be Idle*, 80.
[17] Knights of Labor activist Terence McNeill quoted in Alex Gourevitch, "Labor and Republican Liberty,"

defend inmate labor found its counterpart in the imagined ideal worker of the advanced industrial factory.

Turning to late nineteenth and early twentieth century efforts to recruit and retain disabled workers, often for low- or semi-skilled factory-based positions, I examine the rhetorical construction of disabled employees as model workers whose efficiency, loyalty, and dependability rivaled (if not exceeded) that of their non-disabled peers. Far from mere exceptions to the otherwise widespread exclusion of disabled workers during this period, these examples point to the crucial ideological work done by disability to the construction of the "good worker" in the context of increased industrial automation and mechanization. What might appear as a gain in the empowerment and acceptability of disabled workers, I argue, needs to be critically assessed as part of a new labor regime that required its own normative ideal of the proper worker. Within this new regime, certain bodies were made to reflect both the qualities of what the ideal worker was not (lazy, dependent) and those qualities that were essential to the function of industrial capitalism but were incongruous with the free labor ideal (docility, pliability). Relegating these workers to the boundaries of wage labor allowed—and continues to allow—a certain degree of denial and fantasy about the meaning of labor and its ideal form.

Disability Contra Capitalism

The emergence of physical and mental difference as an object of political, social, and medical concern is often seen as broadly coincident with industrialization and the changing social conditions that accompanied the rise of capitalism. Whether because of a high incidence of debilitating disease, accidents of birth, or the harshness of life in early modern Europe and Colonial America, many physical impairments that we might now classify as disabilities were

Constellations: An International Journal of Critical & Democratic Theory 18, no. 3 (September 2011): 433.

previously understood to be the unavoidable consequence of everyday life—unfortunate, but not cause for exclusion or segregation from the community. More significant for the purposes of rural, agrarian life was the ability to engage in physical labor. Observes Kim E. Nielsen, "one-armed men and women, or those with slight palsies or limps, or those who could not hear…could plant fields, mind children, and sail, build a barrel or a hunting trap, fish, shoot a gun, or spin and weave."[18] In contrast to later modes of industrial production, which would set rigid expectations for the pace of labor as well as the mode of its performance, pre-capitalist society, oriented as it was toward subsistence, allowed for a more expansive understanding of what might count as productive activity. If some disabled community members did occasionally end up in the local almshouse due to lack of family or community support, this was not the norm. "Feeble minds," writes James Trent, "were an expected part of rural and small-town life….They might be teased, their sometimes atavistic habits might disgust, but unlike the mad and the criminal, they were not feared."[19]

And while scholars have debated the extent to which this acceptance extended to more severe cognitive or psychological impairments, they have nevertheless tended to portray the pre-industrial period as more accommodating of physical and mental differences.[20] So long as the

[18] As Kim Nielsen notes, "Survivors of smallpox experienced high rates of blindness and physical disfigurement. Scarlet fever could leave those afflicted blind, deaf, or deafblind." See Nielsen, *A Disability History of the United States*, 20, 18.

[19] James W. Trent, *Inventing the Feeble Mind: A History of Mental Retardation in the United States* (Berkeley, CA: University of California Press, 1994), 1.

[20] According to Nielsen, whereas "European colonists paid relatively little attention to physical disability…those that today we could categorize as having psychological or cognitive disabilities attracted substantial policy and legislative attention by Europeans attempting to establish social order." See Nielsen, *A Disability History of the United States*, 20. For a detailed account of mental illness in colonial America, see Albert Deutsch, "Public Provision for the Mentally Ill in Colonial America," *Social Service Review* 10, no. 4 (December 1, 1936): 606–22; Parnel Wickham, "Conceptions of Idiocy in Colonial Massachusetts," *Journal of Social History* 35, no. 4 (Summer 2002): 935–954. On the evolution of capitalism and its effects on people with disabilities, see Finkelstein, *Attitudes and Disabled People*; Deborah Marks, *Disability: Controversial Debates and Psychosocial Perspectives* (New York: Routledge, 1999), 80–82; Oliver, *The Politics of Disablement: A Sociological Approach*; David J Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, Revised (New Brunswick, N.J.: Aldine Transaction, 2009). On the role that disabled family members played in the pre-capitalist household

affected individual was able to contribute to the local or household economy in some minimal capacity, their presence went relatively unremarked. "The proverbial village idiot may not have been respected greatly," admits Deborah Marks, "but they would certainly have a social role, albeit a somewhat low-status one."[21] Alan Roulstone credits this inclusiveness to a more expansive definition of productive activity in pre-industrial societies, noting the "absence of predetermined and shared supra-communal productive norms and expectations," which, in turn, permitted an understanding of work that was more attuned to "localized and community-specific value systems."[22] For most households, this meant the ability to take into consideration the relative abilities of family members in determining the proper division of labor.[23] This flexibility, along with a greater "diversity of economic activities and work forms"—what Roulstone refers to as the "polymorphic productive landscape" of pre-industrial societies—while not necessarily more forgiving, did not automatically preclude the participation of disabled family members in the household economy. "Disabled people, as with their non-disabled counterparts," he argues, "were once involved in a much broader range of economically validated and productive work that included localized contractual, familial and kin obligation, reciprocal arrangements, promissory commitments, and feudal-bonded and forced activities." And though Roulstone acknowledges that "not all disabled people were viewed as capable," he stresses that many were nevertheless "required to contribute to socially and communally determined activities."[24]

If Roulstone's critique is directed at industrialization in general and not simply industrial *capitalism*, he locates the crucial distinguishing factor between pre-industrial and industrial

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economy, see Brad Byrom, "A Pupil and a Patient: Hospital Schools in Progressive America," in *The New Disability History: American Perspectives*, ed. Paul K. Longmore and Lauri Umansky (New York: New York University Press, 2001), 133–56.

[21] Marks, *Disability*, 81.

[22] Roulstone, "Disabled People, Work, and Welfare," 261.

[23] Brendan Gleeson, *Geographies of Disability* (New York: Routledge, 1999), chap. 5.

[24] Roulstone, "Disabled People, Work, and Welfare," 261, 260, 258.

society in the increasingly narrow definition of productive capacity in which work "became synonymous with contracted, and often pre-calibrated, assumptions as to normal productivity parameters into which work and worker have to fit."[25] Roulstone's suggestion that the pace and structure of pre-capitalist life was more accommodating of physical and mental differences is echoed by Brandon Gleeson, who credits the "material context of feudal production" with "allow[ing] peasant households a great degree of liberty in designing everyday tasks that would match the corporeal capacities of each family member."[26] This evolution from what E.P. Thompson refers to as a more individualized, "task-oriented" approach to labor and toward a timed conception of labor—one that was exacting, disciplined, and, in a word, synchronized—meant that those disabled family members who had benefitted from the flexibility afforded by the rhythms of rural life saw themselves cast aside by the more rigorous demands of the rapidly industrializing urban economy.[27] "The speed of factory work, the enforced discipline, the time-keeping and production norms" argue Frank Ryan and Joanna Thomas, "were a highly unfavorable change from the slower, more self-determined and flexible methods of work into which many handicapped people had been integrated."[28] Insofar as disabled family members had previously been able to contribute—however minimally—to the household economy, waged labor did not afford the same temporal or structural flexibility.

Work thus became what Gleeson refers to as a "formalized system with clear productive thresholds," that not only excluded many disabled workers by virtue of its pace and intensity, but also shifted the locus of productive activity from the household to the factory.[29] Whatever their

[25] Roulstone, 261.
[26] Gleeson, *Geographies of Disability*, 83.
[27] E. P. Thompson, "Time, Work-Discipline, and Industrial Capitalism," *Past & Present* 38 (1967): 84.
[28] Ryan and Thomas, quoted in Marks, *Disability*, 81. For more on the pace of industrial vs. pre-industrial modes of production and their effect on disabled community members, see esp. Gleeson, *Geographies of Disability*, chap. 5.
[29] Gleeson, *Geographies of Disability*, 71.

productivity level, the care and protection of the disabled in the pre-industrial period was considered a matter of familial and community responsibility, a dynamic that met with considerable resistance with increasing urban migration. "The transition to industrial capitalism and an urban wage labor economy," observes Sarah Rose, "reduced families' capacity to care for and make use of partly productive members."[30] More than the exclusion of the disabled from waged labor, it was the loss of these local and familial networks of care that prompted the shift towards institutional segregation and confinement. If the pace of industrial labor rendered it especially hostile to those with mental and physical disabilities, increasing urbanization and the demands of waged labor made it less and less likely that families could maintain disabled family members at home.[31] Occurring alongside and in conjunction with the rise of custodial care, many families were forced to place their newly burdensome and unproductive disabled relatives in institutions where they were less liable to impede the efficiency of the burgeoning market economy.[32]

However, to the extent that disabled people *were* more readily accommodated by pre-industrial societies, scholars have risked overstating this fact in an attempt to highlight societal shifts in the treatment and perception of disability that accompanied the emergence of industrial capitalism.[33] And while recent scholarship by Daniel Blackie, Anne Borsay, Sarah Rose, David

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[30] Rose, *No Right to Be Idle*, 2.
[31] Rose, 10. See also Finkelstein, *Attitudes and Disabled People*; Mike Oliver, "Social Policy and Disability: The Creation of Dependency," *Disability, Handicap, and Society* 1, no. 1 (1986): 5–17; Joanna Ryan and Frank Thomas, *The Politics of Mental Handicap* (New York: Penguin Books, 1980).
[32] Oliver, "Social Policy and Disability: The Creation of Dependency." This point is also made by Harlan Hahn, who argues that, far from obstructing the smooth operation of the market economy, "the existence of persons with disabilities as well as other marginal groups reduces the pressures which might otherwise disrupt the operation of capitalism." See Harlan Hahn, "Advertising the Acceptably Employable Image: Disability and Capitalism," *Policy Studies Journal* 15, no. 3 (March 1987): 552.
[33] According to Anne Borsay, materialist approaches to disability history "exaggerate the impact of industrialization. Negative attitudes to disability were evident both in the religions and cultures of Ancient Greece and Rome, and in the art and literature of Renaissance Europe." See Anne Borsay, "History and Disability Studies: Evolving Perspectives," in *The Routledge Handbook of Disability Studies*, ed. Nick Watson (New York: Routledge, 2012), 330.

Turner, and others has questioned the accuracy of these more materialist interpretations of disability history, many scholars persist in the belief that pre-capitalist society, if not more accepting of disability, was at least more accommodating of physical and mental difference.[34] To contest this approach to the history of disability is not, as Gleeson suggests, to "naturalize disability as a transhistorical 'tyranny of nature' which, thanks to the steady progress of technology and enlightened humanist practices…is now all by conquered."[35] This strikes me as a false opposition. It seems possible, in other words, to both acknowledge the increasing pathologization of physical and mental abnormality as coterminous with rise of industrial capitalism *and* to question the dominant narrative of pre-industrial inclusion lost to the ravages of capitalism. My point here is not to pass judgment about the relative superiority or inferiority of the treatment of the disabled during either the pre-industrial period or in the present. It is instead to question whether the story often told about the emergence of disability as a site of medical and social concern overstates the degree of acceptance and integration achieved during the pre-industrial period, thereby obscuring the ways in which disability functioned over the course of the late nineteenth and early twentieth centuries not merely as the modern worker's constitutive opposite, but also as an intrinsic—if latent—aspect of its figuration.

Turning, in the next section, to the advent of the sheltered workshop in mid-nineteenth century institutions for the blind, I examine the evolving justifications given for their establishment and maintenance, especially as the false promise of their eventual profitability became more apparent. Founded in response to the exclusion of the blind from the paid workforce, early workshops at once challenged and reinforced the assumed incompatibility

[34] See, for example, David M. Turner and Daniel Blackie, *Disability in the Industrial Revolution: Physical Impairment in British Coalmining, 1780-1880* (Manchester, UK: Manchester University Press, 2018); Borsay, "History and Disability Studies"; Rose, *No Right to Be Idle*.
[35] Gleeson, *Geographies of Disability*, 53–54.

between disability and productive labor, their evolution charting the increasing tension between assertions of blind workers' efficiency and skill and their figuration as worthy recipients of charitable aid. Following historians who have turned to this moment of confinement and exclusion to trace the increasing incapacitation of the disabled body, I treat the workshop as a site in which disabled labor is both made invisible (by its location) and rendered exceptional (by the form and mode of its execution). This insistence on the "special" needs of the disabled worker elides what affinities might exist between the labor performed within the workshop and what International Harvester's H.A. Worman referred to as the "routine muscular effort" required by new production techniques.[36]

"To Render Useful to Society Their Hands"

The first sheltered workshop in the United States, founded in 1840 at the Perkins Institution for the Blind in Boston, Massachusetts, was intended to provide graduates of the school with remunerative employment after efforts to secure positions in the community failed.[37] The Institution's founder, Dr. Samuel Gridley Howe, although previously critical of the use of workshops in European schools—the equivalent, he argued, of "educating men for the almshouse"—was forced to concede their necessity after it became evident that societal beliefs about "the apparent incapacity of the blind" were preventing graduates from "gain[ing] their own livelihood" beyond the walls of the institution.[38] Modelling the Perkins Institute on the *Institut*

[36] H. A. Worman, quoted in David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865-1925* (New York: Cambridge University Press, 1987), 61.
[37] For more information on Howe and the Perkins Institution, see Mary Klages, *Woeful Afflictions: Disability and Sentimentality in Victorian America* (Philadelphia, PA: University of Pennsylvania Press, 1999), chap. 2; Jacobus tenBroek, "Sheltered Workshops for the Physically Disabled," *Journal of Urban Law* 44 (1966): 39–70.
[38] Samuel Gridley Howe, "Education of the Blind," *North American Review* 37, no. 80 (July 1833): 22, 36. A prominent social reformer, Howe would go on to found the Massachusetts School for Idiot and Feeble-Minded Children in 1848, before becoming active in the antislavery cause, eventually serving in the Freedmen's Inquiry Commission. For more on Howe, see James W. Trent, *The Manliest Man: Samuel G. Howe and the Contours of*

National des Jeunes Aveugles, founded in Paris in 1785 by Valentin Haüy, Howe, following Haüy, challenged the assumption that the blind were "consigned by destiny to idleness, languor, and dependence," instead seeing in education a means of "rescu[ing] [them] from the miseries of beggars," thereby "render[ing] useful to society their hands."[39] Aided by developments in tactile printing technology, students received both a vocational and intellectual education with the hopes that the focused development of their individual strengths, rather than an emphasis on handicrafts and manual labor alone, would "ensure to them a competent livelihood."[40]

If Howe recalled the exceptional accomplishments of professors Nicholas Saunderson and Henry Moyes as evidence of the unrealized potential of the blind and the benefits of their education, he admitted that it was unlikely that the average blind man could compete at the level of his sighted brethren, least of all in manual employment.[41] American prosperity, if not the absence of the "stubborn and cruel prejudices" that informed the European treatment of the blind, ensured that the blind man "might still procure not only the necessities, but the comforts of life," even if "[he] were to gain a trifle less than his neighbor." All else being equal, if two candidates applied for a job, one blind and one sighted, the position, Howe assumed, would be offered to the blind man—"the misfortune of the claimant…the strongest argument in his favor."[42] Deeply critical of charity and its role in perpetuating what he described as the

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Nineteenth-Century American Reform (Amherst, MA: University of Massachusetts Press, 2012).

[39] Valentin A. Haüy, *An Essay on the Education of the Blind* (London: Sampson Lowe, Marston, and Co., 1894), 6, 10.

[40] Howe, "Education of the Blind," 48.

[41] Nicholas Saunderson (1682-1739) served as the Lucasian Professor at Mathematics at Cambridge from 1711 until his death in 1739. Blinded by smallpox in infancy, he figures prominently, if not entirely accurately, in Denis Diderot's *Letter on the Blind*. For more on Saunderson, see Dennis Diderot, *Diderot's Early Philosophical Works*, ed. and trans. Margaret Jourdain (Chicago, IL: Open Court Publishing, 1916), 4–18. For a contemporary reading of Diderot's *Letter on the Blind* in the context of political theory and disability, see Hirschmann, "Diderot's Letter on the Blind as Disability Political Theory." Henry Moyes is described as a "professor of philosophical chemistry at Manchester" in Howe, "Education of the Blind," 31. The genius of these men was only possible, according to Howe, because of "friends of a philosophic turn of mind, whose affections prompted them to great efforts to overcome the obstacle of blindness." See Howe, 31.

[42] Howe, "Education of the Blind," 48.

"humiliating dependence" of the blind, Howe nevertheless relied on employers' "humane spirit" to close the gap between dependence and self-sufficiency.[43] This double-movement between "discard[ing] and reinforc[ing] the association of blindness with charity," as Mary Klages argues, appealed to the public's benevolent sentiments while also assuaging growing anxieties about the economic burden of the institution on the state. If blind people could be made capable of "becom[ing] self-supporting citizens, members of a republic of self-reliant autonomous individuals," this was only possible so long as the blind as a *class* were seen as a "necessarily dependent group who inspired sympathy and who deserved the benevolence a Christian community would unhesitatingly provide."[44]

Despite their well-rounded education, however, former students struggled to find employment following graduation. Where Howe had previously argued for the relative insignificance of sight for the acquisition of knowledge, extolling the "tenaci[ty]," "attentiveness," and even "superiority" of blind students as compared with their more "negligent" and "listless" sighted counterparts, the limited prospects of the Institutions' early graduates prompted a reconsideration of the purpose and aims of education as well as a reevaluation of the limits imposed by blindness on the moral and intellectual capacities of the child.[45] Evident in the Institution's annual reports, this transition from the celebratory optimism of the 1830s to the sober pessimism of the 1840s and 1850s tracks as well a shift in the understanding of the causes and consequences of blindness. Writing in 1845, thirteen years after the Institution's founding, Howe admitted that while there remained exceptions, "most of the

[43] Howe, 21, 34. Commenting on the negative influence of charitable aid, Howe argues that "instead of stroking at the root of the evil and preventing blindness from necessarily entailing misery on the sufferer, men have increased its ill effects by diminishing the incentives to action…the hand of charity has wounded, while it soothed the sufferer." See Howe, 21.
[44] Klages, *Woeful Afflictions*, 32.
[45] Howe, "Education of the Blind," 28.

blind must abandon the hope of earning a livelihood by an easier way than that of handicraft work; and that many of those even who betake themselves to this will always need the help of an establishment to furnish them with work."[46] Whatever Howe's prior beliefs about the futility of instructing blind children in the arts of rug-making and basket-weaving, the institution-based workshop provided a space where, in the words of disability scholar Georgina Kleege, "adult inmates could work for a minimal stipend making useful and decorative objects to be sold at a loss in the school's shop."[47]

Initially intended to employ those "few individuals" from each class who could not "gain a livelihood by themselves" and who "had no home or friends" upon whom they could depend for their support (*AR* 1840; 11, 13), the Work Department transformed over the course of the 1840s from a "supplement" to the institution to a large standalone facility designed to accommodate what Howe referred to as the blind individual's "peculiar way of working" (*AR* 1845, 5). If Howe had reconciled himself to the reality that "the great majority [of blind persons] must depend upon their hands," the growing dominance of industrial production presented a unique challenge for the prospective blind worker (*AR* 1845, 4). The problem was not simply that the blind lacked the capital or the social connections needed to strike out on their own, nor that the goods they produced possessed none of the "the neatness and polish" that only sight could provide (*AR* 1841, 16). Rather, it was the rise of mechanized industry that most threatened the ability of graduates to become so-called "useful members of the body social" (*AR* 1842, 26). Notwithstanding those occupations that were, by their very nature, closed to the blind, such as farming, sailing, and military service, Howe maintained that certain handicrafts, such as "coarse

[46] Perkins Institution and Massachusetts Asylum for the Blind, *Thirteenth Annual Report of the Trustees to the Corporation* (Boston, MA: Eastburn's Press, 1845), 4. Future references to the *Annual Reports* will appear parenthetically in text as AR followed by the year of publication, and page number.
[47] Georgina Kleege, "Blindness and Insight," *Raritan* 22, no. 2 (Fall 2002): 169.

weaving…[and] braiding" could still be capably (if slightly less quickly) performed without the necessity of sight (*AR* 1843, 12). Unfortunately, these skills were also the most vulnerable to mechanization, and, as Howe would lament in 1846, "If it was simple enough for the blind to do, a man of wood and iron, who wants neither food nor wages, has been made expressly to perform it" (*AR* 1846, 12).

If these mechanical "contrivances" posed a threat to artisanal craft production more broadly, for blind workers the consequences were more dire. Although still nascent, the rise of the market economy in the post-Revolutionary period marked the dawning obsolescence of what Bruce Laurie describes as the idyllic "preindustrial world of the self-sufficient yeoman and independent mechanic."[48] Already excluded from agricultural pursuits by virtue of their blindness, and not intelligent enough, by Howe's reckoning, to exclusively pursue professional trades, (Howe had earlier assumed that teaching, and especially musical instruction, would prove a particular province of the blind,) the blind worker's reliance on handicraft production placed them at a unique disadvantage in the rapidly-shifting mid-century economy.[49] "A blind man," Howe lamented, "can make excellent baskets, common brushes, brooms, &c; but if, having learned to do so, he goes out into the world, and tries to live by his art, he meets great difficulties" (*AR* 1843, 13).

Although Howe's anxieties about "machinery usurp[ing] the province of handicraft," are somewhat premature, he is nevertheless correct in predicting the coming transformation in workplace organization—a shift that bore especially heavily on the blind and disabled worker

[48] Bruce Laurie, *Artisans Into Workers: Labor in Nineteenth-Century America* (New York: Hill and Wang, 1989), 46.

[49] The supposed diminished intelligence of the blind was the result, Howe argued, of the significance of sight for the acquisition of knowledge. "Blindness…always and necessarily cuts off one of the means by which alone certain intellectual faculties are developed and some mental qualities are formed. To suppose there can be a full and harmonious development of character without sight," he suggests further, "is to suppose that God gave us that noble sense quite superfluously" (*AR* 1848, 37).

(*AR* 1846, 12). Less efficient and exacting than their sighted counterparts and characterized by "poor and feeble bodily organization," the blind worker is portrayed by Howe as uniquely incapable of adapting to a newly mechanized workplace (*AR* 1949, 29). He writes: "*Nothing* about the establishment is calculated for blind persons, to whom rumbling cog-wheels, revolving bands, and whirling saws, are objects of fear and of real danger" (*AR* 1843, 13, my emphasis). Should the blind worker "seek employment in a common shop" Howe warns, they will "find[] nothing adapted to his particular way of working." Indeed, "*all* the professions, all the arts, all the callings of men are adapted for those who have eyes, and almost every post has duties which require the use of sight" (*AR* 1845, 5, my emphasis).

Of course, the answer for Howe was not to make "regular" workplaces more accessible. What was needed, instead, was a "*special* means of labor" that could supplement the meager earnings of the blind worker while preserving a veneer of self-sufficiency and independence (*AR* 1854, 27, my emphasis). As with present-day defenses of sheltered workshops, the solution, Howe argued, lay in creating specialized work departments for the "industrious and skillful blind workman" so that they might therefore be "raise[d]…above the crushing sense of dependence on charity" (*AR* 1843, 17). "Everything in the workshop of the blind man" insisted Howe, "should be arranged with a reference to his peculiar mode of working" (*AR* 1843, 13).

Anxious that the work department not be viewed either by employees or patrons an act of charity, Howe struggled to articulate how it might be made to straddle the divide between capitalist profit motives and the more paternalistic impulses of the Institution's donors. The department, he acknowledged, was unlikely to ever turn a profit, but it should nevertheless retain "the character of an independent establishment" (*AR* 1850, 15). Imploring his readers to consider purchasing brooms, mattresses, doormats, and other household goods from the department's

storefront on Boston's Bromfield Street, Howe insisted that while patrons should bear in mind the blindness of the goods' fabricators, they should refrain from purchasing goods *because* the workers were blind. Employment, rather, was a right to which the blind were entitled as men. Writes Howe, "Incapacitated to compete with others by no fault of his own…he has a right, therefore, to expect at the hands of society a chance to work, and sufficient pay to support life and gratify its reasonable wants" (*AR* 1850, 40).

If the blind were both excluded from the competitive market *and* entitled to "exercis[e]…[their] talents in a useful and profitable manner," it was up to institutions to fill this gap (*AR* 1848, 65). They were to become, in Howe's words, "capitalists of the blind" (*AR* 1848, 65), supplementing workers' pay—which would remain indexed to their productivity—"by the investment of a fund, the interest of which would be devoted to eking out the wages of each industrious blind man, so as to raise them enough to support life in comfort" (*AR* 1852, 24-25). Importantly, institutions "should seek no pecuniary advantage themselves"; rather, "they should be willing to make a considerable outlay in the beginning, and expect their return, not in money, but in a richer harvest of good" (*AR* 1848, 65). Howe's insistence that such practices were not just a matter of justice—that is, of granting to the blind their right to work regardless of productivity—but also *capitalist* warrants further consideration.

Consisting primarily in calls for the protection of the handful of blind-dominated craft industries like broom-making and basket weaving from the incursion of outside competition, Howe's insistence that the institution become "capitalists of the blind" illustrates the tension in his thinking between a commitment to market fairness and an awareness of its consequences for the worker who, through no fault of their own, could not keep pace. "Whatever charity men may have for the blind in other respects," he lamented, "in the way of business, they have none; they

grind them between the upper and nether millstones of competition" (*AB* 1850, 38). And yet, despite the violence of this imagery, Howe maintained that such competition was nevertheless "fair and honorable"(*AB* 1847, 64). Already squeezed by "subdivision…[and] machinery," the common workman could hardly be expected to forego the comparative advantages provided by sight for the sake of placing themselves "on something like equal terms" with the blind worker (*AB* 1850; 38, 39). Instead, it was the duty of society to "set apart and leave for [the blind worker] such kinds of social labor as they can best perform" (*AB* 1847, 65).

To the extent that Howe viewed all workers as threatened by mechanized industry, the challenges faced by blind workers were not simply a matter of degree. Rather, the perceived inability of the educated blind to adapt to this new industrial reality betokened a broader shift in reformers' understanding of the etiology of blindness as well as the increased influence of hereditarian thinking in the reform circles of which Howe was a part. And while Howe, like many of his contemporaries, was anxious to maintain a distinction between the relatively more capable blind, deaf, and dumb, on the one hand, and the idiots and the feeble-minded, on the other, he nevertheless assumed that the lowered "standard of bodily health and vigor…among the blind" corresponded to a similar diminution of their "mental power and ability." "The blind as a class," he declared in 1847, "are inferior to other persons in mental power and ability" (*AR* 1847; 38, 23). Likewise, the workshop, which began as an adjunct to the institution for those without other options, became, by the latter half of the nineteenth century, a sign not just of the increasing exclusion of people with disabilities from the workforce, but also of the belief that whatever specialized labor they did perform was not, properly speaking, work.

"Willing, Happy Laborers"

At roughly the same time that disabled workers were being excluded from the paid labor market, custodial institutions were increasingly turning to inmate labor as a way of containing rising costs. Quite simply, patient-workers, often employed in the care of their fellow inmates, provided the labor upon which these institutions depended, particularly as their populations rose. As Sarah Rose and James Trent have shown, the beliefs that drove the initial wave of institution building—that the disabled were educable and that work could provide the key to their eventual rehabilitation and release—gave way, over the course of the nineteenth century to heightened anxiety about the "dire financial and moral risks" that disability posed to society.[50] Due in part to developments in evolutionary theory that linked unchecked population growth and immigration with rising rates of crime, disorder, and immorality, social reformers began to offer scientific explanations for—if not answers to—a wide range of social problems. As Douglas Baynton observes, "evolutionary concepts, analogies, and explanations soon became ubiquitous across practically every field of scholarship as well as in the broader culture."[51] Even Howe, who maintained the hope that Perkins graduates would eventually be integrated into society, did so out of a concern that the "unnatural" congregation of "infirm persons" would exacerbate what he saw as the "evils and disadvantages growing out of their infirmity," that, if left unchecked, could lead to their persistence "through successive generations." "Marriage in cases where one of the parties has such hereditary predisposition," he warned, "is generally unwise, often wrong. Intermarriage between two persons so predisposed is always wrong, very wrong" (*AR* 1848; 29, 20).

[50] Rose, *No Right to Be Idle*, 19. See also Trent, *Inventing the Feeble Mind*, chap. 3.
[51] Douglas C. Baynton, "'These Pushful Days': Time and Disability in the Age of Eugenics," *Health and History* 13, no. 2 (2011): 48.

Where Howe proposed "scatter[ing]" adult workshop employees "about in private families" as a means of preventing the creation of what he described as a "society of blind persons," many superintendents instead advocated for long-term, sex-segregated custodial care, particularly for individuals variously classed as idiotic, feeble-minded, and epileptic (*AR* 1848; 40, 29).[52] Whatever his beliefs about the heritability of blindness and its moral and intellectual "disadvantages," Howe maintained a sharp distinction between the abilities of the blind, on the one hand, and the feeble-minded and idiotic, on the other (*AR* 1848, 29). In 1851, while still superintendent at the Perkins Institution, Howe founded the Massachusetts School for Idiotic and Feeble-minded Youth, the first of over twenty-five state-funded institutions that would spring up across the United States in the latter half of the nineteenth century, many with Howe's guidance. Influenced by the pioneering work of French physician Edouard Séguin, whose methods stressed the educability and humanity of the idiot, Howe likewise saw specialized education as crucial to the idiot child's intellectual, social, and moral improvement. Previously thought to be "condemned to brutishness," the idiot could, through focused effort, be "render[ed] less liable to wretchedness, and better fitted for some little degree of usefulness."[53] However, as with his evolving views on the mental and physical effects of blindness, Howe would gradually revise

[52] As Molly Ladd-Taylor notes, "At the turn of the century, experts used the word *feebleminded* in both specific and general ways: it was a precise term for the highest level of functioning within a mental deficiency diagnosis, and a generic term for every type of mental defect." See Molly Ladd-Taylor, *Fixing the Poor: Eugenic Sterilization and Child Welfare in the Twentieth Century* (Baltimore, MD: Johns Hopkins University Press, 2017), 84–85. Classification systems would become more rigid with the development of the Binet-Simon intelligence test in 1905. Originally developed by French psychologists Alfred Binet and Theodore Simon, a revised version of the test was imported to the United States in 1908 by Henry Goddard, superintendent of the Vineland Training School for Feeble-Minded Girls and Boys. For more on the Binet-Simon test (including in immigration and sterilization debates), see: Allison C. Carey, *On the Margins of Citizenship: Intellectual Disability and Civil Rights in Twentieth-Century America* (Pittsburgh, PA: Temple University Press, 2009), chap. 4; Troy Duster, *Backdoor to Eugenics* (New York: Routledge, 2003), 12–13; Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (Berkeley, CA: University of California Press, 1985), 77–78; Ladd-Taylor, *Fixing the Poor*, chap. 3; Alexandra Minna Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (Berkeley, CA: University of California Press, 2005), chap. 3.

[53] *Eighth Annual Report of the Massachusetts School for Idiotic and Feeble-Minded Youth* (Cambridge, MA: Metcalf & Company, 1856), 19.

this assessment over the course of the 1850s, eventually abandoning hopes for their integration into productive society. The idiot, Howe admitted in 1858, "can indeed be made less burdensome, but not materially productive. They are idiots for life." As such, they "must ever being in child-like dependence upon others for guidance and support."[54]

While earlier approaches to disability (and cognitive disability in particular) emphasized the educative and reformative influence of institutions, new understandings of the heritability of "feeble-mindedness" demanded a different orientation, one that was less geared toward, in the words of one nineteenth-century reformer, "developing a capacity for productive industry," and more toward what Walter Fernald, who succeeded Howe as the superintended of the Massachusetts School for the Feebleminded, described as "retention and guardianship."[55] Newly attuned to the dangers posed by inmates' reproductive capacity (and alleged hyperfertility), the transition to confinement and segregation (and later, to involuntary sterilization) was as much about the provision of adequate care for the disabled as it was about preventing their further "propagation."[56] Speaking at the 1902 National Conference of Charities and Correction, A. W.

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[54] Samuel Gridley Howe, address at the laying of the cornerstone of the Pennsylvania Training School, quoted in Trent, *Inventing the Feeble Mind*, 23.

[55] Rose, *No Right to Be Idle*, 35.The first quote is attributed to Charles Wilbur, responsible for establishing a number of state and privately-run asylums throughout the Midwest and Northeast. Unlike other superintendents, Wilbur, writes Rose, "rejected the hereditarian and port-eugenic understandings of idiocy that became popular starting in the 1870s" (24). For the quote from Fernald, see Walter E. Fernald, "The History of the Treatment of the Feeble-Minded," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1893), 210. For Fernald, the term feeble-minded "includes all degrees and types of congenital defect, from that of the simply backward boy or girl but little below the normal standard of intelligence to the profound idiot, a helpless, speechless, disgusting burden, with every degree of deficiency between these two extremes" (213). An indication of the broader shift toward custodial care can be found in the changing names of institutions, many removing references to "youth" or "children." See Isaac N. Kerlin, "Provision for Idiots," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1885), 159.

[56] Henry Herbert Goddard, "The Menace of Mental Deficiency from the Standpoint of Heredity," *Boston Medical and Surgical Journal* 175, no. 8 (1916): 269. A leading proponent of the American eugenics movement, Goddard was no stranger to stoking fear in his audiences. For more on the concern with managing inmates reproductive capacities, see Carey, *On the Margins of Citizenship*, chap. 4; Gregory Michael Dorr, "Defective or Disabled?: Race, Medicine, and Eugenics in Progressive Era Virginia and Alabama," *The Journal of the Gilded Age and Progressive Era* 5, no. 4 (October 2006): 359–92; Ladd-Taylor, *Fixing the Poor*; Paul A. Lombardo, ed., *A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era* (Bloomington, IN: Indiana University Press, 2011); Michael Rembis, "Disability and the History of Eugenics," in *The Oxford Handbook of*

Wilmarth, superintendent of the Wisconsin Home for the Feeble-Minded, bemoaned the inability of reformers to keep pace with "the increase in the number of defectives" born to known "degenerates." Citing the need for "radical action," Wilmarth demanded the forcible confinement of "feeble-minded and epileptic adults, especially females between the ages of fifteen and forty-five." (Like many of his colleagues, Wilmarth believed that the unrestrained liberty of feeble-minded women posed a more significant threat to society, as they were considered especially vulnerable to the sexual advances of non-feeble-minded men).

Noting a shift in the character of the institution from that of a school to what he describes as a "permanent residence with congenial surroundings," Wilmarth joined other reformers in depicting the institution as a respite from the demands of an increasingly hostile and unforgiving society. Rather than a "place of confinement," the custodial institution, he observed, "constitutes a community, or colony, as large as a reasonably complete village, where [inmates] can have all needed entertainment suited to their mental capacity."[57] Unfit to re-enter society, it was the task of the reformer, wrote Isaac N. Kerlin, superintendent of the Pennsylvania Training School for Feeble-Minded Children, to "establish the dependence of the defective classes…on the strong arm of the paternal government." Foreseeing a decrease in "jails, criminal courts, and grog-shops [saloons]," consequent to the proliferation of these so-called "'villages of the simple'…made up of the warped, twisted, and incorrigible," Kerlin conjured an image of the institution as a "haven[] dedicated to incompetency," that, while driven by hereditarian fears, appealed to the

Disability History, ed. Michael Rembis, Catherine Kudlick, and Kim E. Nielsen (New York: Oxford University Press, 2018), 85–104; Stern, *Eugenic Nation*.

[57] A. W. Wilmarth, "Report of Committee on the Feeble-Minded and Epileptic," *Proceedings of the National Conference of Charities and Correction* 30 (1902); 152, 156, 157, 158. This includes holding inmates against the wishes of the parents, who Wilmarth dismisses as only interested in their children once they become "a source of revenue." Wilmarth recounts the following heartbreaking exchange, in which he "asked the aunt of three of our charges, from a family that contained a large number of irresponsibles, what she could give the children that we could not furnish. She said she could think of nothing but more liberty, which was the last thing that these girls could safely have" (158).

benevolent sentiments of his contemporaries, conveniently glossing over the often dismal reality of lifelong confinement. Rather than object to the soaring populations of state institutions—many approaching if not exceeding 1,000 residents—reformers emphasized instead the salubrious effects of removing the feeble-minded from the isolation and neglect of the natal family and placing them in a welcome community of their "own kind."[58] Incapable of becoming "fit for full citizenship," theirs would be a "circumscribed world" of permanent institutional seclusion; "a world of industry," and, crucially, "a celibate world."[59] Indeed, by the end of the nineteenth century, few inmates left institutions, instead becoming an essential component of their day-to-day functioning and continued economic viability.[60]

If the expansion of state institutions signaled a shift in the treatment and perception of disability, it also placed increasing demands on state budgets, forcing superintendents to come up with new ways of containing costs while maintaining patient care, particularly as institutional populations soared.[61] Inmate labor—both in the institution and on separate farm colonies—provided the solution to both of these issues, not only reducing per-capita costs, but also, as James Trent shows, "solv[ing] the problem of employee turnover" that plagued many large state facilities. Whereas (non-disabled) employees frequently complained of "the long hours and the

[58] The reference to the feeble-minded living among their own kind is from Amos Bonsall, board member of the Pennsylvania Training School for Feeble-Minded Children. See "Discussion on the Care of Imbeciles," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1891), 331.
[59] See F. M. Powell, "Care of the Feeble-Minded," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1897), 295; Alexander Johnson, "Report of the Committee on Colonies for Segregation of Defectives," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1903), 250.
[60] According to Fernald, as of 1874 there were 1,041 inmates nationally. By 1892, this population would swell to 6,009 inmates in nineteen public institutions. See Fernald, "History of the Treatment of the Feebleminded"; 208, 214. Writing in 1908, E. R. Johnstone estimated that only around two percent of inmates were candidates for being "return[ed] to society," and "even with these it's rather questionable." See E. R. Johnstone, "What are We Trying to Do?" *The Training School* 5, no. 6 (Aug. 1908), 7.
[61] As of the 1896 Conference of Charities and Corrections, there were 24 public institutions for the feeble-minded in the United States. Of these, nine housed over 400 inmates, with Pennsylvania and Ohio housing 1,028 and 973, respectively. See Powell, "Care of the Feeble-Minded," 290.

unpleasant monotony of caring for inmates whose conditions appeared to be unimprovable," superintendents discovered that so-called "higher functioning inmates not only tolerated the monotony and unpleasantries but, indeed, seemed to thrive on them."[62] For George H. Knight, the superintendent of the School for Feeble-Minded in Lakeville, Connecticut, it was only by increasing inmate populations that institutions would be able find willing caretakers for their more "helpless cases." Indeed, "even for money, [superintendents] cannot get suitable people who are willing to come in contact with the lowest grade in the right spirit,—a spirit which demands patience, cheerfulness, and affection." The imbecile, on the other hand, "will share his pleasures and attainments with his weaker brother with a sense of high privilege in being allowed so to share it." Indeed, "none make tenderer care-takers, nor, under supervision, more watchful ones."[63] Agreeing with his colleague, Alexander Johnson, the superintendent of the Indiana School for Feeble-Minded, remarked on the "tenderness and patience exercised by a great, big, overgrown man-baby toward a tiny child-baby, when put in his care." "Here," he argued, "is a place which the imbecile can fill, often as well as and certainly more willingly than, a hired helper."[64]

The belief that so-called "higher grade" feeble-minded patients were more cheerful, patient, and capable of withstanding—and even enjoying—the monotony of the tasks to which they were assigned was cited frequently by administrators, many of whom saw little conflict between the therapeutic benefits of institutional labor and the economic savings that might result. While some administrators framed their reliance on inmate labor as a means of offsetting the cost of their now life-long maintenance, others were more overt in linking the savings gained to funds

[62] Trent, *Inventing the Feeble Mind*, 63.
[63] George M. Knight, "The Colony Plan for All Grades of Feeble-Minded," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1892), 160.
[64] Alexander Johnson, "Permanent Custodial Care," (Boston, MA: Geo H. Ellis, 1896), 216.

that would have otherwise been spent on hired help. Speaking at the 1885 National Conference of Charities and Correction, Kerlin boasted of the "four thousand dollars in wage labor annually saved" at the Pennsylvania Training School through the use of inmate labor, thereby permitting "the institution to retain about thirty inmates on the non-paying list; that is thirty *free* patients."[65] He was careful to specify, however, that the reduction in "the average running expenses of these institutions" achieved by the "utilization of the industrial abilities of the trained inmates," should be considered secondary to the therapeutic and moral benefits of labor.[66] "These simple people" as Fernald claimed in 1893, "are much happier and better off in every respect when they know they are doing some useful and necessary work."[67]

The ease with which reformers could simultaneously acknowledge the economic benefits reaped through the use of inmate labor and deny the possibility of these same inmates finding suitable employment outside the institution, was predicated on the belief that their labor could

[65] Emphasis in original. According to Kerlin, this quote is taken from a "late" annual report of the Pennsylvania Training School, though I have been unable to locate the original. See Kerlin, "Provision for the Idiots," 162.
[66] *Tenth Annual Report of the Massachusetts School for Idiotic and Feeble-Minded Youth* (Boston, MA: William White, 1858), 21. This quote was taken from Trent, *Inventing the Feeble Mind*, 23. For more on the shift toward custodial care, see Philip M. Ferguson, *Abandoned to Their Fate: Social Policy and Practice Toward Severely Retarded People in America, 1820-1920* (Philadelphia, PA: Temple University Press, 1994); Nielsen, *A Disability History of the United States*, chap. 5; Steven Noll, "Institutions for People with Disabilities in North America," in *The Oxford Handbook of Disability History*, ed. Michael Rembis, Catherine J. Kudlick, and Kim E Nielsen (New York: Oxford University Press, 2018), 307-; Steven Noll, *Feeble-Minded in Our Midst: Institutions for the Mentally Retarded in the South, 1900-1940* (Chapel Hill, NC: The University of North Carolina Press, 1995); Steven Noll and James W. Trent, "Introduction," in *Mental Retardation in America: A Historical Reader*, ed. Steven Noll and James W. Trent (New York: New York University Press, 2004), 1–36; Rose, *No Right to Be Idle*, chap. 2; Trent, *Inventing the Feeble Mind*, chaps. 2–3. For a long overdue investigation of the institutional experience of so-called low-grade idiots and those incapable of any kind of inmate labor, see Holly Allen and Erin Fuller, "Beyond the Feeble Mind: Foregrounding the Personhood of Inmates with Significant Intellectual Disabilities in the Era of Institutionalization," *Disability Studies Quarterly* 36, no. 2 (2016), http://dsq-sds.org/article/view/5227. As Allen and Fuller observe, there has been a tendency in disability historiography to "generalize from the experience of 'high-grade' inmates," often neglecting the "rigid hierarchy of intellectual classifications govern[ing] every aspect of institutional life. 'High grade inmates had access to rudimentary education by virtue of what they were not: wretched, untrainable 'idiots' and 'imbeciles'."
[67] Fernald, "History of the Treatment of the Feebleminded," 218. Indeed, Fernald notes that per capita costs at the Pennsylvania institution…has been reduced from $300 to a little over $100 per annum, largely from the fact that the work of caring for the low-grade children in the custodial department is done to a very large extent by the inmates themselves" (219).

only be extracted under certain conditions—conditions that could only be achieved under institutional guidance. "Outside of an institution," Fernald alleged, "it would be impossible to secure the experienced and patient supervision and direction necessary to obtain practical, remunerative results from the comparatively unskilled labor of these feeble-minded people."[68] Though perhaps "deft in handicraft," inmates lacked the "higher powers of the intellect" necessary to navigate such a "busy, practical, money-getting age" in which even the able worker was struggling to make ends meet.[69] Remarking on the unusual skill of a sixteen-year-old boy employed in the shoe shop of the Iowa Institution for the Feeble-Minded, the Institution's superintendent, F. M. Powell, stressed that it would nevertheless be a mistake to presume, as some visitors had, that "prodigies of this character are wrongfully detained" and ought therefore be allowed their freedom.[70] Instead, it was incumbent upon the institution to cultivate and direct these abilities to their desired end. Inmates, one Illinois reformer specified, were "useful under direction, just as a horse is. But you cannot make a horse useful except under direction….You may correct bad habits, you may develop and improve them; but they must remain under your control…in order to be of any real service to the world."[71]

For those inmates who were capable of becoming self-supporting, administrators were careful to draw a distinction between self-support and what they referred to as "self-control." Whereas the former indicated the ability of the inmate to "earn by their labor…as much as it costs to maintain them," self-control referred to that "indescribable something" that the feeble-

[68] Fernald, "History of the Treatment of the Feebleminded," 218.
[69] F. M. Powell, "Care of the Feeble-Minded," 295, 294; A. C. Rodgers, "Functions of a School for the Feeble-Minded," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1888), 102.
[70] F. M. Powell, "The Care and Training of Feeble-Minded Children," *Proceedings of the National Conference of Charities and Correction* 14 (Boston, MA: Geo . Ellis, 1887), 256.
[71] Quote from Frederick Wines, secretary of the Illinois Board of Public Charities, in "Discussion of the Feeble-Minded," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1889), 321.

minded, by definition, lacked.[72] For feeble-minded women especially, it was the perceived absence of *sexual* self-control that most necessitated their confinement. Acknowledging that "they could send out girls who would make first-rate servants," Mary Dunlap, superintendent of the New Jersey State Institution for Feeble-Minded Women, objected that prospective guardians and employers could not be trusted to "shield" them from the sexual advances of opportunistic men.[73] It was only under the watchful guidance and supervision of the Institution that these "girls"—for they were, as Dunlap emphasized, "always irresponsible children"—could be both made productive, and, through their "withdrawal from the world," be prevented from "bequeathing the burden of imbecility to a future generation."[74]

Often referred as "moral imbeciles," an expansive (and continually expanding) diagnostic category encompassing those prone to crime, promiscuity, pauperism, and various other forms of social deviancy, administrators readily admitted that the confinement of these "higher grade" inmates enabled a significant reduction in institutional expenses.[75] Responding to growing fears of the "overwhelming cost" of custodial care, Kerlin suggested that it might "be greatly diminished by the recognition of moral imbecility, and by transferring the care of the more helpless to this class, retained as aids in our general institutions." Indeed, many reformers advocating against the education of moral imbeciles, suggesting instead that they be exclusively "trained in the direction of helping the more helpless." Advised Kerlin: "They may become the

[72] Wines, in "Discussion of the Feeble-Minded," 327.
[73] Discussion on the Care of the Feeble-Minded," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1895), 466.
[74] Isaac N. Kerlin, "The Moral Imbecile," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1890), 401.
[75] See Kerlin, "The Moral Imbecile." For more on moral imbecility as a clinical category, see Licia Carlson, "Cognitive Ableism and Disability Studies: Feminist Reflections on the History of Mental Retardation," *Hypatia* 16, no. 4 (2001): 124–146; Steven A. Gelb, "Social Deviance and the 'Discovery' of the Moron," *Disability and Society* 2, no. 3 (1987): 247–58; Ladelle McWhorter, *Racism and Sexual Oppression in Anglo-America: A Genealogy* (Bloomington, IN: Indiana University Press, 2009), 134–35, 163–68; Trent, *Inventing the Feeble Mind*, 79–83.

Gibeonites, the bearers of wood and water, in our institutions, but must always be under suitable supervision."[76]

As men were more likely to be employed in physical or agricultural labor, especially as institutions turned to farm colonies as a means of reducing institutional costs, it was the women who were tasked with providing much of the care work. As Fernald attested in 1893, "many of the[] adult females, naturally kind and gentle, have the instinctive feminine love for children, and are of great assistance in caring for the feeble and crippled children in the custodial department."[77] Indeed, "The female 'moral imbecile,'" as Licia Carlson astutely observes, "came to the forefront precisely at the time when the custodial institutions needed her most."[78] Against the alarmist threats of her "prolific and indiscrete reproduction," it was her easy affection and capacity for love—those very qualities which necessitated her confinement—that made the female moral imbecile particularly adept at caring for the "more helpless of [her] own kind." This "mother nature," one reformer commented, was to be her "chief usefulness" in the institution.[79]

If the late nineteenth century was characterized by the increasing exclusion of disabled people from the paid workforce—due in part, as we have seen, to the rise of waged labor, mechanization, and urbanization—the growing reliance of institutions on inmate labor illustrates the degree to which this broader shift had less to do with the relative *productivity* of disabled labor than with the proper field of its execution. Once confined within the boundaries of the

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[76] Kerlin in "Discussion on Care of the Feeble-Minded," *Proceedings of the National Conference of Charities and Corrections* (Boston, MA: Geo. H. Ellis, 1890), 444. The Gibeonites were inhabitants of Canaan who were condemned to servitude after concealing their origins from Joshua and the Israelites so that they might be spared from destruction. See Josh. 9:19-23 NKJV "Let them live, but let them be woodcutters and water carriers for all the congregation, as the rulers had promised them."
[77] Fernald, "History of the Treatment of the Feebleminded," 218.
[78] Carlson, "Cognitive Ableism and Disability Studies," 130.
[79] Alexander Johnson, "Permanent Custodial Care: Report of the Committee on the Care of the Feeble-Minded," *Proceedings of the National Conference of Charities and Correction* (Boston, MA: Geo. H. Ellis, 1896), 216-17.

institution, disabled labor, however similar in appearance to the labor previously performed by waged workers, was rendered at once therapeutic, and, insofar as economic value *was* mentioned, as just compensation for the burden of the workers' care. Crucial to offsetting the escalating costs of custodial care, inmates became, as Rose observes, "too productive to discharge."[80]

And yet, at the same time that disabled labor was confined to the institution, the figure of the pliant, dependable "trained idiot" described by Fernald and his contemporaries would find its double in the imagined ideal worker of the reorganized industrial workplace. Like the feeble-minded "girl" whose mothering instincts were vilified as they were harnessed in the service of the institution, it would be the very qualities that *excluded* prospective disabled workers from competitive employment—that is, their simplicity, pliability, and need for constant "supervision and direction"—that would become central to this ideal. Displaced by the rise of factory production, the independent citizen-worker gave way, over the course of the nineteenth century, to the tightly managed and increasingly fractionalized wage laborer. And it was in the midst of this so-called "crisis of free labor" and the dissonance between the free labor ideal and the reality of wage labor that the figure of the disabled worker emerged, serving as the unspoken background that both defined and delimited the semi-skilled industrial operative.

"Approximately Useful Citizens"

Insofar as the Civil War was "a war for the establishment of free labor," what free labor meant in the wake emancipation wasn't entirely clear. For wage laborers especially, the prospect of a life spent under the employ of another seemed antithetical to freedom understood as economic independence. Earlier efforts to dignify artisanal and craft production, though capable

[80] Rose, *No Right to Be Idle*, 81.

of accommodating the journeyman and the boss under the auspices of free labor, were insufficient to bridge the widening gap between the wage worker and the capitalist. Factory production, while still relatively nascent at midcentury (the Lowell Mills notwithstanding), became increasingly dominant in the subsequent decades, due in part to electrification. As Daniel Nelson observes, while "in 1870 there were only a handful of large factories…by 1900…there were 1,063 factories with 500 to 1,000 workers and 443 with more than 1,000 wage earners." By the 1910s, the largest plants, such as General Electric (Schenectady, NY), Bethlehem Steel (South Bethlehem, PA), International Harvester (Chicago, IL) and Ford (Highland Park, MI), easily exceeded 10,000 workers. The scale of these factories, both in terms of their physical size and the numbers of workers they employed, to say nothing of the complexity of their production processes, also required new approaches to labor management. These reforms, including continuous flow manufacturing, a greater attention to the proper layout of the shop floor, and an emphasis on assembly methods, while often oriented toward increasing efficiency and output and decreasing costs, were equally concerned with achieving managerial control over all aspects of the production process.[81]

Of course, while America may have been freed from its subjection to British rule, the continued presence of chattel slavery within its borders offered both a challenge to and a grounding for the construction of the free labor ideal. For Northern workers especially, free labor was the standard relative to which the comparatively backward South might be measured and

[81] Daniel Nelson, *Managers and Workers: Origins of the Twentieth-Century Factory System in the United States, 1880-1920*, Second Edition (Madison, WI: University of Wisconsin Press, 1996), 5. As Nelson notes, "Cambria had nearly 20,000 employees at Johnstown in 1909; General Electric had 15,000 workers at Schenectady and 11,000 at Lynn in 1910. Pullman had 15,000 at its Chicago plant in 1913, and International Harvester had 15,000 at the old McCormick plant in 1913." By 1916, Ford, whose River Rouge plant would later become the largest plant in the US, employed 33,000 workers at Highland Park (by 1924, the Highland Park plant employed 42,000 workers, while River Rouge employed 68,000). A list of the largest plants can be found on pages 8-9. Nelson also provides an excellent overview of the architecture and environment of the plant (see esp. Ch. 2).

found wanting. This veneration of free labor, Eric Foner observes, was "not merely…an attack on southern slavery and the society built upon it; it was an affirmation of the social system of the North—a dynamic, expanding capitalist society, whose achievements and destiny were almost wholly the result of the dignity and opportunities which it offered the average laboring man."[82] Within the context of the industrializing economy of the nineteenth century—and the increasing prevalence of wage labor especially—the existence of chattel slavery reassured the northern wage laborer of his comparative freedom, even if the actual conditions of his labor appeared to be anything but.[83] In short, the absolute dominion of the master and the "terrible spectacle" of the violence enacted on slaves' bodies worked to "dignify and ennoble free labor…provid[ing] a sense of equality between the man who pays wages and the man who receives them."[84] Recalling Marx's observation that the "veiled slavery of wage laborers in Europe needed the unqualified slavery of the New World as its pedestal," this opposition exerted a similarly powerful influence on the way free labor was defined in the antebellum North.[85]

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[82] Foner, *Free Soil, Free Labor, Free Men*, 11. The literature on the meaning of free labor in post-revolutionary and antebellum America is vast. For a good overview, see Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1993); Marcus Cunliffe, *Chattel Slavery and Wage Slavery: The Anglo-American Context, 1830-1860* (Athens, GA: University of Georgia Press, 1979); Fink, "From Autonomy to Abundance"; Jonathan A. Glickstein, *Concepts of Free Labor in Antebellum America* (New Haven, CT: Yale University Press, 1991); David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*, Revised Edition (New York: Verso, 2007); Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870* (Chapel Hill, NC: University of North Carolina Press, 1991); Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (New York: Cambridge University Press, 2010); Sean Wilentz, *Chants Democratic: New York City & the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1986).

[83] Roediger, *The Wages of Whiteness*, 49. See also David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006).

[84] The phrase "terrible spectacle" is Frederick Douglass's, using it to describe the beating of Aunt Hester by her master. See Frederick Douglass, *Narrative of the Life of Frederick Douglass: An American Slave, Written by Himself* (New Haven, CT: Yale University Press, 2016), 16. In using it here I am inspired by Saidiya Hartmann's brilliant analysis of the role of spectacles of brutality in the figuration of the slave. Rather than eliciting a sense of outrage or injustice, these scenes "immure us to pain by virtue of their familiarity." See: Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 3. The phrase "dignify and ennoble free labor…" is from Davis, *Inhuman Bondage*, 248.

[85] Karl Marx, *Capital: Volume I*, trans. Ben Fowkes (New York: Penguin Classics, 1990), 925. For a brilliant analysis of this passage and its place in Marx's theory, see Walter Johnson, "The Pedestal and the Veil: Rethinking

If the wage laborer seemed a mere shadow of the independent proprietor, the promise of eventual self-employment following a limited period as a hireling helped bridge this chasm, thereby maintaining a collective faith in the dignity of labor no matter its actual content. Should a worker fail to achieve independent proprietorship, the fault was his alone, suggesting, as Abraham Lincoln would famously put it, "either a dependent nature which prefers it, or improvidence, folly, or singular misfortune."[86] For Lincoln, observes William Forbath, "the hireling's lot was almost as unfree as the slave's, but it was a brief way station on the road to owning productive property."[87] However, while economic mobility remained possible for many, it nevertheless assumed the presence of a population of unskilled workers who, as Seth Rockman argues, "were unable to claim the prerogatives of market freedom," but who nevertheless performed the dangerous, dirty, and often poorly-paid tasks that fueled the ever-growing market economy. Both free and slave, theirs was the class of worker that made up the "street scrapers…seamstresses, mariners, ditch diggers, dockworkers, domestic servants, woodcutters, [and] ragpickers."[88] With little chance of rising above the rank of a common laborer, the exclusion of casual and low-skilled labor from the binary opposition between free and slave labor helped sustain the belief that one could, with the right amount of effort, rise from the status of a wage earner to achieve self-employment.

This motivating fiction, already showing signs of strain by the mid-nineteenth century, was stretched to the breaking point in the aftermath of the Civil War. By 1850, wage earners exceeded slaves; by 1860 they had overtaken independent entrepreneurs. Though the increasing

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the Capitalism/Slavery Question," *Journal of the Early Republic* 24, no. 2 (Summer 2004): 299–308.
[86] Foner, *Free Soil, Free Labor, Free Men*, 23.
[87] Forbath, "Caste, Class, and Equal Citizenship," 28. Lawrence B. Glickman refers to wage labor as a "temporary step on the way to self-employment," see Glickman, *A Living Wage*, 12.
[88] Seth Rockman, *Scraping by: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore, MD: Johns Hopkins University Press, 2009), 2.

dominance of wage labor made it less and less likely that the hireling would one day become a proprietor, chattel slavery—and the structuring opposition between free and slave labor—had allowed the northern, white, male worker to overlook the unfreedoms that characterized his own employment conditions.[89] To the extent that labor activists and pro-slavery southerners had long pointed to the similarities between hireling and slave labor (albeit in service of disparate ends), the presence of chattel slavery as freedom's ultimate negation postponed a more thoroughgoing critique of the relations of subordination and dependence that existed within the employment relationship until after the War.[90] Captured by the metaphor of "wage slavery," this correspondence between wage and slave labor called attention to the coercive aspects of the ostensibly free employment relation even as it recognized the distance between the inequalities internal to the wage relationship and the unfreedom of the slave.[91]

Powerless to arrest the steady march of industrialization and mechanization, it was the category of labor, rather than its content, that required reformulation. "Granting the debasement of hirelings, only to assert their elevation above chattel slaves," abolitionists instead focused their attention on the legal status of the person as the grounding distinction between slavery and

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[89] As Foner states, "the years after 1860 saw a steady diminution of the prospects for a worker or farm laborer to achieve economic independence." See Foner, *Free Soil, Free Labor, Free Men*, 32–33.There has been some disagreement about the extent of industrialization in the antebellum period, with some, like Pamela Brandwein, dating the "intensification of the division of labor" to "as early as the 1820s and 1830s." This earlier dating, she argues, helps explain the rise in anti-slavery sentiment as slavery bore the stigma formerly accorded to manual labor. See Brandwein, "The Labor Vision of the Thirteenth Amendment, Revisited Symposium," 37. Brandwein is writing in response to Lea S. VanderVelde, "Labor Vision of the Thirteenth Amendment," *University of Pennsylvania Law Review* 138 (1989): 437–504.

[90] Eric Foner, *Politics and Ideology in the Age of the Civil War* (New York: Oxford University Press, 1980), 74–76. Nancy Fraser and Linda Gordon describe the slave as a "negative[] of the image of the worker." See Fraser and Gordon, "A Genealogy of Dependency," 318.

[91] For more on the concept of wage slavery, see: Cunliffe, *Chattel Slavery and Wage Slavery*; Cedric de Leon, "Black from White: How the Rights of White and Black Workers Became 'Labor' and 'Civil' Rights after the U.S. Civil War," *Labor Studies Journal* 42, no. 1 (March 2017): 10–26; Fink, "From Autonomy to Abundance"; Foner, *Politics and Ideology in the Age of the Civil War*, chap. 4; Foner, *Free Soil, Free Labor, Free Men*, xvii–xxxviii; Eric Foner, *The Story of American Freedom* (New York: W. W. Norton & Company, 1998), 116–37; Glickman, *A Living Wage*, pt. I; Alex Gourevitch, *From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century* (New York: Cambridge University Press, 2015); Roediger, *The Wages of Whiteness*, chap. 4.

freedom. Defined at its most basic level by the dispossession of personhood and the fruits of one's labor, slavery found its opposite in freedom as self-ownership. As such, it was contract—and the wage contract in particular—that registered the distinction between these two conditions. "Slavery's antithesis," as Amy Dru Stanley observes, "was free contract….From an ideal of voluntary political submission, it became first an image of free market relations and then was recast as the embodiment of citizens' freedom in a republic purged of chattel slavery." In simple terms, contract "distilled the rights of freedom."[92]

This reformulation of freedom as contract, while central to antislavery debates, reflected as well a shifting understanding of the free employment relation. No longer anchored by its opposition to chattel slavery, the language of contract reconciled the degradations of the wage labor system to the ideal of free labor. Wage earning, previously understood as a relation of dependence between the worker and his or her employer, was refigured as a "free and equal exchange between individual sellers of labor and buyers representing concentrated capital."[93] As Leon Fink astutely observes, it is no coincidence that "this more individualistic emphasis on rights of property" gained traction "at the very moment when individual workers themselves became overwhelmingly dependent on powerful employers."[94] Indeed, the turn toward contract freedom coincided with widespread labor militancy, giving lie to the idealized employment scenario in which employer and worker were imagined as "free and equal agents in the capitalist marketplace."[95] It is this conflict between contract freedom and an older emphasis on self-

[92] Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*, 32, 74, 59.
[93] Stanley, 81.
[94] Fink, "From Autonomy to Abundance," 73.
[95] William E. Forbath, "The Ambiguities of Free Labor: Labor and the Law in the Gilded Age," *Wisconsin Law Review* 1985 (1985): 799. The literature on unions and labor politics is vast. For an introduction, see Rosanne Currarino, *The Labor Question in America: Economic Democracy in the Gilded Age* (Chicago, IL: University of Illinois Press, 2011). See also: Rosemary Feurer and Chad Pearson, *Against Labor: How U.S. Employers Organized to Defeat Union Activism* (Chicago, IL: University of Illinois Press, 2017); Julie Greene, *Pure and Simple Politics:*

employment that can be seen playing itself out in the debate surrounding Potter's comments on the effects of mechanization on the industrial worker. Where Potter warns of an increased incidence of idiocy as a consequence of labor-saving machinery, his opponents emphasize instead the opportunities afforded by this machinery for a life lived outside the immediate confines of the capital-labor relationship. Within this debate, the figure of the idiot and the specter of idiocy and feeble-mindedness marks a transition point between an earlier concern with the content of one's job (that is, wage work versus self-employment) and a shift toward a more regulatory and leisure-oriented approach to the employment relation.

What was previously a more radical demand for the "abolition of the wage system," became, by the turn of the century, an attempt to secure "amelioration *within* the system." Prompted by increasingly vocal demands for a living wage, along with shorter hours and other workplace regulations, this reconciliation of the idealized white, male independent proprietor to the realities of wage labor was at least partially facilitated, I contend, by the figure of the idiot. Finding its reference in the "quiet, happy, and approximately useful" inmate-laborer, this new figure of the wage earner at once embodied and denied its origin. At the very moment that disabled workers were being increasingly excluded from the competitive labor force, in other words, it was the qualities that defined the good worker of the custodial institution that were made central to creating a disciplined workforce.

The function of disability within these narratives has gone largely unmentioned; in part, I

The American Federation of Labor and Political Activism, 1881–1917 (New York: Cambridge University Press, 1999); David Montgomery, *Workers' Control in America: Studies in the History of Work, Technology, and Labor Struggles* (New York: Cambridge University Press, 1979); Montgomery, *The Fall of the House of Labor*; David R. Roediger and Philip Sheldon Foner, *Our Own Time: A History of American Labor and the Working Day* (New York: Verso, 1989); Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960* (New York: Cambridge University Press, 1985); Kim Voss, *The Making of American Exceptionalism: The Knights of Labor and Class Formation in the Nineteenth Century* (Ithaca, NY: Cornell University Press, 1993).

would argue, because of the tendency of contract freedom to obscure and even reinforce relations of domination and subordination within the employment relationship. Calling attention the centrality of subordination (and patriarchal subordination, in particular) to contract theory, Carole Pateman brilliantly shows the ways in which contracts, although agreed upon from positions of (ostensible) equality, give formal sanction to—and even construct as voluntary—relations of subjection. "Contract theory," she argues, "is primarily about a way of creating social relationships constituted by subordination, not about exchange."[96] Highlighting a similar dynamic in the construction of contract freedom, Amy Dru Stanley notes that where earlier understandings of wage labor had seen only subordination, contract instead assumed the worker's "'equality with the master as the seller of a commodity.'"[97] However, this equality was illusory (or at best, short lived); instead, "the employment contract…gives the employer political right to compel the worker to use his capacities in a given manner, or the right to a worker's obedience."[98] Certainly, workers were not so easily fooled by this sleight of hand, railing against the widening inequalities between capital and labor and voicing increasingly strident demands for shorter working hours, higher wages, and better conditions of labor. Nevertheless, the dominance of contract thinking in discerning the contours of freedom had a significant effect on the rhetoric in which these demands were articulated.

The lack of attention to disability in these debates was also due to the fact that disabled people *were* largely excluded from competitive employment during this period, whether as a result of automation and the demand for "intact, interchangeable bodies" or because of new

[96] Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), 58. As Pateman argues, "The 'individual' owns his labour power and stands to his property, to his body and capacities, in exactly the same external relation in which, as a property owner, he stands to his material property" (55).
[97] Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*, 75.
[98] Pateman, *The Sexual Contract*, 151.

workman's insurance policies that (unintentionally) discouraged companies from hiring disabled workers (an issue I will take up in the following chapter).[99] However, while it is certainly the case that industrial labor gave preference to whole, efficient, bodies, less attended to in this literature are the qualities required of the "good" industrial worker—many of which echoed the language used by Howe, Kerlin, and their reformist colleagues to describe the "willing, happy laborers" of the custodial institution. Like the "trained idiots" of the custodial institution who "thrived" on "the monotony and unpleasantries" of custodial caregiving, the "simple idiot" of the industrial factory was judged uniquely capable of withstanding the "unrelenting monotony" of the shop floor.[100] The success of the managerial reforms achieved during this period depended as much upon the cultivation of docile, compliant workforce as it did on the workers' physical capacity to perform the repetitive tasks assigned.

Indeed, it was not just opponents of automation who stressed the intellectual effects of deskilling. If critics of Potter viewed automation as an opportunity for workers to preserve their intellectual energies and seek entertainment in a life outside of work, managers made no truck of the fact that the best unskilled workman, in the words of hiring manager H. A. Worman, "lack[ed] the brain development, experience, or training which would fit them for anything but routine muscular effort." In other words, while employers did stress the importance of having "healthy workers" and advised against allowing sympathy for "the applicant's ill-health…cloud[] the judgment of the employment man," their standards for the workers' intelligence were a different matter. As Worman emphasized in his 1913 manual on "secur[ing] laborers, helpers and skilled workmen": "Exceptional skill, even genius, is out of place in a factory organization

[99] Rose, *No Right to Be Idle*, 3.
[100] Trent, *Inventing the Feeble Mind*, 105.

unless it submits itself to the discipline supporting the mediocre majority."[101] Likewise, we might also recall Frederick Taylor's infamous "Schmidt," the pig-iron handler described by Taylor as "so stupid and so phlegmatic that he more nearly resembles in his mental make-up the ox than any other type." And yet, for Taylor, it was precisely this stupidity and animality that made Schmidt best suited for the "grinding monotony of work of this character." Indeed, it was "one of the very first requirements for a man who is fit to handle pig iron as a regular occupation."[102] If the veracity of Taylor's account of his time at Bethlehem Steel (and in particular of his interactions with Schmidt) has long been a subject of debate, what interests me here is the suggestion that Schmidt's "mental make-up," far from precluding or excluding him from entering the workforce, becomes an asset in the context of deskilled waged labor.[103]

Although by no means common, a handful of companies took this demand for willing, disciplined (and, indeed, ox-like) labor to its logical conclusion, explicitly targeting disabled workers on the assumption that their disabilities—most often deafness—rendered them uniquely suited to low- or semi-skilled factory based labor. In one amusing example, the Chicago-based Sewell-Clapp Envelope Company sought out hunchbacks, alleging that their "delicacy" made them especially suited for operating the plunger envelope machine. The help wanted ad, which ran in the *Chicago Daily News* on January 24th, 1917, read simply: "Wanted—3 Humpbacks: easy work, steady, profitable if competent." Upon further inquiry, the owner of the company, Clement Clapp, explained that while it was the "tradition of the business" to hire "girls" to operate the plunger envelope machine, the firm had found it necessary to add a night shift. Citing

[101] H. A. Worman, *How to Get Workmen* (Chicago, IL: A. W. Shaw Company, 1913), 28–29.
[102] Frederick Winslow Taylor, *The Principles of Scientific Management* (New York: Harper and Brothers, 1914), 59.
[103] For more on the pig-iron story and its various iterations, see Charles D. Wrege and Amedeo G. Perroni, "Taylor's Pig-Tale: A Historical Analysis of Frederick W. Taylor's Pig-Iron Experiments," *Academy of Management Journal* 17, no. 1 (March 1974): 6–27.

social and ethical objections to hiring women to fill these positions, Clapp had initially hired men, "but found their masculinity interfered with the work, which is of a delicate sort." Hunchbacks, on the other hand, were thought to be "more delicate than whole men." Clapp elaborates: "The work requires chiefly the use of the arms. A hunchback can do it as well as a perfectly formed man. And he can do it better because of the somewhat delicate touch he will give to the work."[104]

While we have no way of knowing whether Clapp was successful in his search (or, indeed, what lead him to believe that hunchbacks were possessed of a more "delicate touch"), he was not alone in seeing the disabled as an untapped labor supply, particularly during World War I, when a shortage of able-bodied male workers prompted many employers to look elsewhere—to women, but also to disabled men—to fill vacant positions.[105] Indeed, by 1917, fully 9,563 of the roughly 33,000 employees of Ford Motor Company were considered by the company's chief surgeon, Doctor James E. Mead, to be "not up to the average physical standard" due to a range of ailments and disabilities, among them epilepsy, partial blindness, deafness, and limb amputation.[106] Explained Henry Ford, "The blind man or cripple can, in the particular place to

[104] The ad did attract some attention in the national press; see, for example, "Special Places for Humpbacks," *Los Angeles Times*, January 25, 1917; "Three Hunchbacks Wanted," *The Lowell Sun,* January 25, 1917; "Hunchbacks Wanted for Delicate Work," *Pittsburgh Daily Post*, January 25, 1917. More information, including Clement Clapp's explanation for the ad, can be found in "Envelope Manufacturers Prefer Hunchbacks," *The American Stationer and Office Outfitter* 81, no. 5 (February 3, 1917), 44.

[105] As Firestone employee and Gallaudet University graduate Benjamin Schowe acknowledged during World War II: "War-time pressure has worked a miracle and yesterday's liability is an asset today. Of course such values are not normal and no one expects them to persist long in peace time. Deafness will become a liability again." See Benjamin M. Schowe, "War-Time Evolution of Employment Opportunities for the Deaf," *American Annals of the Deaf* 88, no. 2 (1943): 111.

[106] James E. Mead, "Rehabilitation: Training and Hiring of Disabled Workmen in the Ford Plant," *Monthly Labor Review* 17, no. 5 (1923): 173. According to Mead, the chief surgeon of the Ford Motor Co., the plant included "124 men working with either amputated or hopelessly crippled arms, forearms, or hands; 1 with both hands off; 4 totally blind men; 207 blind in one eye; 253 with light perception in only one eye; 37 deaf and dumb; 60 suffering with epilepsy; 4 with both legs or feet missing; 234 with the foot or leg amputated or hopelessly crippled; 1,560 suffering from hernias of various types; 900 tubercular employees; and 6,180 more suffering from other ailments or diseases" (173).

which he is assigned, perform just as much work and receive exactly the same pay as a wholly able-bodied man would. We do not prefer cripples—but we have demonstrated that they can earn full wages."[107]

If Clapp cited the heightened delicacy or dexterity afforded by certain disabilities, it was more often the case that companies would target disabled workers because of what they thought to be their particular focus, efficiency, and reliability. Between 1916 and 1920, Firestone and Goodyear tire companies together employed over 1,000 deaf workers, enough that a so-called "Silent Colony" was established near the companies' headquarters in Akron, Ohio, boasting deaf sports teams, literary societies, and even sign language instruction for hearing employees.[108] Though these positions did not, for the most part, survive the post-war collapse of the rubber industry, the rhetoric surrounding the recruitment of deaf workers frequently cited their deafness as the source of their enhanced efficiency and diligence.[109] Neither easily distracted nor given to the "gift of gab," deaf and dumb workers were thought to be especially suited for, and even "favored" by what Benjamin Schowe, the Firestone manager in charge of recruitment, referred to as the "regimen of mass production."[110] Insofar as deaf workers were credited with being

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[107] Henry Ford and Samuel Crowther, *My Life and Work* (Garden City, NY: Garden City Publishing Co., 1922), 180.
[108] See employment announcement published in *The Silent Worker* 29, no. 7 (April 1917), 123. "Having weighed the mutes in their Production Department" The Goodyear Tire and Rubber Company "is ready to take on a full thousand men, if available." As of April 1917, 250 deaf men were already on the payroll, by October of 1918, this number had risen to 400. See *The Silent Worker* 31, no. 1 (October 1918), 14. The company also offered sign language classes for hearing workers in an attempt to promote "closer cooperation between departments." See "Deaf Mute Colony in Goodyear Plant, *San Francisco Chronicle,* February 22, 1920: A6. For more on Goodyear's "industrial university," see: "University and Factory," *New York Times*, May 9, 1920: XX10.
[109] Goodyear, which boasted nearly 700 deaf workers in October 1920 had, according to a piece in the *Silent Worker*, "retained only 150 men" as of November the following year. "At the Firestone Tire and Rubber Company, where ordinarily about 150 [deaf workers] were employed, only seven or eight" remained. See "Radical Agitators Harass Deaf Mutes," *The Silent Worker* 34, no. 2 (1921): 78. According to Robert Buchanan, deaf workers were once again employed during WWII, with "approximately 800 deaf men and women work[ing] within the factories of Goodyear and Firestone." See Robert M. Buchanan, Building a Silent Colony: Life and Work in the Deaf Community of Akron, Ohio from 1910 Through 1950," in *The Deaf Way: Perspectives from the International Conference on Deaf Culture*, eds. Carol J. Eating, Robert C. Johnson, Dorothy L. Smith, and Bruce D. Snider (Washington, DC: Gallaudet University Press, 1994), 250-259; 255.
[110] Benjamin Schowe, "The Deaf Worker in Modern Industry," (draft) Benjamin M. Schowe, Jr. Papers 1912-1977, Gallaudet University Deaf Collections and Archives, Gallaudet University Library,

"among the sturdiest and the steadiest in the plant," it was their loyalty as much as their efficiency that drove their increased employment.[111] Acknowledging the monotony of what often amounted to semi-skilled piecework, managers assumed that pervasive discrimination and the dearth of other employment opportunities would prevent deaf and otherwise disabled employees from participating in the kinds of labour unrest that characterized the early 20th century.[112] They would, in other words, be grateful for what work they were able to find.

Reporting on Chicago's Automatic Electric Company for the *Silent Worker Magazine* (a monthly, student-run newspaper published by the New Jersey School for the Deaf), one contributor suggested that when "given an opportunity to prove their ability…deaf workmen are, if anything, ever more industrious, reliable, quick to learn and painstaking than their so-called more fortunate hearing brother."[113] Indeed, by 1903 the company had employed nearly 150 deaf workers after a more limited trial employment found that their dexterity gave them a particular advantage in assembling the "delicate mechanism of then modern telephone."[114] And yet, these workers were valued for more than just their manual dexterity. As one "manager Keith" explained to a reporter from the *Chicago Daily News,* "We find [deaf mutes] better workmen than a good many men who have all their senses. They attend strictly to their own business." Able-bodied boys and men, on the other hand, "play too much." It was for this reason, Keith continued, that companies like Automatic Electric Company had even suggested "replacing all [their] boys with these able substitutes." F. L. Avant, the general superintendent of the Curlee

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[111] "Deaf Mutes in Goodyear Plant Good Workmen," *Fort Worth Star-Telegram*, September 10, 1916. This sentiment is echoed by Isaac Goldberg, the owner of a New York city bottling factory, who credits the deaf with being "more faithful" than other workmen. See "Deaf Mutes Best Workmen," *New York Times*, March 18, 1907.

[112] "We must recognize," admits Benjamin Schowe, "that the repetitive processes of mass production are tedious and wearing on the nervous reserve of the worker" ("The Deaf Worker in Modern Industry," 1).

[113] "Chicago," *The Silent Worker* 15, no. 4 (1902): 49-50, 49.

[114] R. B. Lloyd, "With Our Exchanges," *The Silent Worker* 18, no. 3 (December 1905): 145.

Clothing Company in St. Louis, came to a similar conclusion. "The deaf-mutes," he observed, "do not hang around the water coolers and talk as much as others do; they are not eternally 'spoofing' at one another, but they go along hour in and hour out, paying attention only to their work, undistracted by anything in the plant."[115]

Unfortunately for Keith, the diligence and reliability of the deaf Automatic Electric employees proved short-lived. On April 23, 1903, 150 deaf employees joined the Telephone and Switchboard Workers' Union strike in support of a shorter, nine-hour workday. Expressing a mixture of shock and amused bewilderment, the *Chicago Daily Tribune* declared it the "quietest strike on record," noting the incongruity of the "enthusiastic but noiseless" picketers lining Morgan and VanBuren Streets.[116] Although the company would accede to the union's demands, this victory was bittersweet. By joining their hearing colleagues in the week-long strike, these "silent but gesticulating" workers had shattered the illusion of their solitary diligence. By the following year, only around 30 deaf employees remained.[117] If manager Keith praised the enhanced dexterity of the company's deaf employees, it was their compliance that the company truly valued.

Rather than viewing the targeted hiring of disabled workers by companies like Automatic Electric and Firestone as anomalies within a broader narrative of disability exclusion, they instead offer a lens for discerning the shifting ideals of work and labor at the dawn of the twentieth century, placing the demand for compliant, obedient laborers into stark relief. If

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[115] Avant, quoted in "Being Deaf an Asset in a St. Louis Factory," *The Silent Worker* 34, no. 2 (1921): 41-42, 41.
[116] "Talk of Strike By Signs," *Chicago Daily Tribune*, April 24, 1903. See also "Deaf Mutes Go On Strike: Big Plant Closes Down," *Chicago Daily Tribune,* April 23, 1903.
[117] This number is taken from the monthly Chicago column in the December 1905 edition of *The Silent Worker*, which notes that allegations of the firm employing 150 deaf workers are an "unvarnished lie, there being less than thirty now employed." See "Chicago," *The Silent Worker* 18, no. 3 (December 1905): 38. For more on the dynamics of the strike and the retaliation against the deaf workers, see Robert M. Buchanan, *Illusions of Equality: Deaf Americans in School and Factory, 1850-1950* (Gallaudet University Press, 1999), 73–74.

disability was "becoming inextricably linked with personal morality and economic dependency," it was characteristics that had long defined abnormal bodies and minds, including docility, pliability, and simplicity, that were called upon to shore up the fading fantasy of the free, independent laborer.[118] Coinciding with the exclusion of people with disabilities from the paid workforce and their confinement in custodial institutions, it was this invisibility and confinement that obscured their figuration in the low- and semi-skilled wage-earner.

Conclusion

Tracing the evolution of disabled labor from the inception of workshops for the blind in the 1840s to the rise of waged labor in the late nineteenth century, this chapter has argued for the centrality of disability to evolving conceptions of labor in the late nineteenth and early twentieth centuries. Where prior scholarship has typically characterized this period as one marked by exclusion, in which disabled labor was, to use Rose's phrase, "made unproductive," I have shown how disability—and the specter of the pliant, docile, patient-worker—served as a critical (if unappreciated) reference point in navigating the transition from the free labor ideal of the antebellum period to its seeming negation in "the mechanical and unintelligent character" of industrial labor. Indeed, it was the very invisibility of disabled people—their exclusion from the labor market as well as their confinement in custodial institutions—that obscured whatever links might have been drawn between the "useful and necessary work" they performed and the dependencies and unfreedoms of wage labor.[119]

[118] Rose, *No Right to Be Idle*, 4.
[119] Fernald, "History of the Treatment of the Feebleminded," 218.

Chapter 2: "He Lives by His Disablement": Disability and the Industrial Accident Crisis

Introduction: Breaking Down and Wearing Out

On October 28th, 1908, John Treiman fell ill with what was then known as "painter's colic." An employee of the Boston Navy Yard, Treiman had been tasked with "scal[ing] lead-painted compartments on ships."[1] Characterized by weakness, anemia, and "severe paroxysmal abdominal pain," painter's colic was "among the earliest symptoms of chronic lead poisoning."[2] Unfortunately for Treiman, the Federal Workmen's Compensation Act—passed earlier that year—only covered injuries "of an accidental nature." Distinguishing between accidental, "traumatic" injury and occupational disease, George Wickersham, the Solicitor for the Department of Commerce and Labor, clarified that because lead poisoning was "of gradual development…it is impossible to state when the intoxication first began. There is," he continued, "no element of an accident either in the blood poisoning or the colic, unless we may consider the taking of the lead into the system as a series of trivial accidents not noticeable at the time of happening." The colic, Wickersham concluded, "is not an accident in any sense. It is simply a symptom of a disease."[3] At issue, in other words, was not whether Treiman's colic was "contracted in the course of employment"—indeed, Wickersham readily admits that this was

[1] George H. Wickersham, "'Is Injured' 'Whenever an Accident Occurs,'" in *Opinions of the Solicitor for the Department of Commerce and Labor Dealing With Workmen's Compensation Under the Act of Congress Granting to Certain Employees of the United States the Right to Receive from It Compensation for Injuries Sustained in the Course of Their Employment: From August, 1908, to August, 1912* (Washington, D.C.: Government Printing Office, 1912), 166.
[2] *Twentieth Century Practice of Medicine*, quoted in Wickersham, 167.
[3] Wickersham, 167.

highly likely—but rather whether the Act was intended to cover the "gradual breaking down and wearing out of the workman," that resulted in his incapacitation.[4] Finding that there was nothing in the Act that permitted this interpretation, Treiman's application for workmen's compensation was denied. Insofar as Treiman was engaged in the so-called "lead-using trades," the colic was "a necessary incident to his employment."[5]

The question of what injuries, illnesses, and diseases a worker ought to bear as a condition of their employment preoccupied employers, workers, and policymakers alike at the turn of the twentieth century. Rapid industrial growth had led to what one commentator described as a "cascade of injuries" and deaths that showed little sign of abating.[6] According to legal historian Fabian Witt, by 1900, "one worker in fifty was killed or disabled for at least four weeks each year because of a work-related accident."[7] In the rail industry—one of the first to come under federal regulation—rates of accidental injury and death were even more alarming. Whereas roughly one worker in twenty-six was injured in 1900, by 1917, the rate was just over one in ten.[8] In coal mining, which only collected data on fatalities prior to 1911, the death rate increased 63 percent between 1896 and 1910, from 2.84 to 3.96 per 1,000 workers.[9] Of the top

[4] Wickersham, 153.
[5] Wickersham, 167, 175.
[6] John Fabian Witt, "Toward a New History of American Accident Law: Classical Tort Law and the Cooperative First-Party Insurance Movement," *Harvard Law Review* 114, no. 3 (2001): 716.
[7] John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge, MA: Harvard University Press, 2004), 2–3.
[8] Data on railway injuries and fatalities from Bureau of the Census, "Historical Statistics of the United States: Colonial Times to 1957" (Washington, D.C.: U.S. Department of Commerce, 1960), 437. Statistics on injuries and fatalities to employees and passengers were published by the Interstate Commerce Commission beginning in 1889. As William F. Willoughby admitted in 1901 "in no other department of industry in the United States are equally complete and accurate statistics of accidents to employees available as in that of railway transportation. See William F. Willoughby, "Accidents to Labor as Regulated by Law in the United States," *Bulletin of the Department of Labor* 32 (January 1901): 7. On railroad accidents and rise of regulation in the latter half of the nineteenth century, see Mark Aldrich, *Death Rode the Rails: American Railroad Accidents and Safety, 1828–1965* (Baltimore, MD: Johns Hopkins University Press, 2006); Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001).
[9] Frederick W. Horton, "Coal-Mine Accidents in the United States and Foreign Countries" (Washington, D.C.: Department of the Interior, Bureau of Mines, 1913), 12.

twenty most lethal mine disasters, *fourteen* occurred in the first two decades of the new century. In December of 1907 alone, two explosions—at the Monongah mine in West Virginia on December 6th and at the Darr mine in Van Meter, Pennsylvania on December 19th—were together responsible for the deaths of 601 workers. The Monongah disaster, which claimed 362 lives, remains the most lethal mining disaster in United States history.[10]

Dramatizing the economic and social precarity in which so many members of the working class lived, the accident crisis provoked searching reflections on the "values of individual autonomy, independence, and self-ownership" that had characterized the free-labor ideal.[11] Efforts to mitigate (if not to prevent) injuries and accidents through safety regulations and factory inspections had proved largely unsuccessful, with poor enforcement and insignificant penalties offering employers little incentive for compliance.[12] Likewise, nineteenth-century common-law approaches to workplace accidents, which held employers liable only in cases of outright negligence, had become increasingly incapable of addressing either the frequency or the severity of the injuries that accompanied mechanization. Gone, too, was the related assumption that the risks entailed by a particular occupation were sufficiently compensated by a comparatively higher wage. To the extent that this had ever been the case, the overall decline in real wages in combination with the sheer scope of the accident crisis and its economic effects necessitated a more robust response.[13] Reluctant to propose legislation that might hamper industrial growth, policymakers searched for a solution to the accident crisis that could address

[10] Officials recorded 362 fatalities at Monongah and 239 at Darr. "All Mining Disasters: 1839 to Present," The National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, accessed June 4, 2020, https://www.cdc.gov/niosh/mining/statistics/content/allminingdisasters.html.
[11] Witt, *Accidental Republic*, 127.
[12] According to Witt, "by the first decade of the twentieth century…state factory inspection regimes in the United States were seen as clear failures." See Witt, "Toward a New History of American Accident Law," 834.
[13] Isaac M. Rubinow, *Social Insurance: With Special Reference to American Conditions* (New York: Henry Holt, 1913), 35.

its social and economic effects, if not their cause(s). Legally mandated workmen's compensation, was thought to fulfill both these goals, providing injured workers and their families a percentage of their weekly wage for a fixed period of time. Either outsourcing insurance to private firms, enrolling in state-backed plans, or self-insuring, workmen's compensation offered, in the words of Iowa Industrial Commissioner Warren Garst, "to the employe the maximum compensation at the minimum cost to the employer."[14]

Between 1910 and 1920, 42 states would pass workmen's compensation laws. Heralding what the New York statute described as a "new system of compensation" for workers engaged in the "hazardous trades," these laws marked a radical departure from earlier common law interpretations of workplace accident liability.[15] While differing in their particulars, state laws typically offered injured workers and their dependents a percentage of their weekly wage for a fixed period of time.[16] Most significantly, the new legislation compensated workers and their families for accidental injury regardless of whether they or their employers were found responsible. These statutes did not, as in tort law, assign legal liability for damages, nor did they directly address the meagre wages and unsafe working conditions that likely contributed to the accident in the first place. Rather, they commodified the only asset many workers had at their disposal: their labor. As such, the compensation received in the aftermath of the worker's injury or death represented "the lost value of his future productive labor" embodied by the injury, rather

[14] Warren Garst, "First Biennial Report of the Iowa Industrial Commissioner to the Governor of the State of Iowa for the Period Ending June 30, 1914" (Des Moines, IA: State of Iowa Office of Industrial Commissioner, 1914), 5. (please note also that "employee" was, at this time, spelled "employe."

[15] Quoted in Jeremiah Smith, "Sequel to Workmen's Compensation Acts," *Harvard Law Review* 27, no. 3 (1914): 356.

[16] At most, families of deceased workers could expect to receive two-thirds of their weekly wage for up to 400 weeks, with lower compensation rates and shorter term limits for disabling injuries. For a state-by-state comparison of fatal accident and injury compensation amounts, see table B.1 in Price V. Fishback and Shawn Everett Kantor, *A Prelude to the Welfare State: The Origins of Workers' Compensation* (Chicago, IL: University of Chicago Press, 2000), 211–12.

than a wrong committed by the employer for which the worker (or his survivors) was owed damages.[17]

Where the last chapter argued for the significance of disability and disabled labor to the continued salience of the free labor ideal in the period following the Civil War, this chapter traces the evolution of the meaning of labor amidst the unraveling of the free labor ideology in the early years of the twentieth century. Confronting the reality (and likely permanence) of the wage labor society, workers during this period struggled to come to terms with the degradation of work and its consequences for what Alice Kessler-Harris refers to as the "responsibilities of male citizenship."[18] If the reformulation of freedom as contract had helped resolve the contradiction between wage earning and the ideal of free labor, the accident crisis threatened to disrupt this delicate balance. Exposing the thinness of the independence secured through industrial wage work, accidents and their economic consequences posed a distinct problem for efforts to preserve the "dignity of the (male) worker."[19]

In this chapter I argue for the significance of disability for understanding shifts in the meaning of labor at the beginning of the 20th century. Often dismissed as "irrelevant to labor and

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[17] Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, MA: Harvard University Press, 2012), 61. On the passage of compensation statutes, see Price V. Fishback and Shawn Everett Kantor, "The Adoption of Workers' Compensation in the United States, 1900-1930," *Journal of Law and Economics* 41, no. 2 (October 1998): 305–42; Fishback and Kantor, *A Prelude to the Welfare State*; Lawrence M. Friedman and Jack Ladinsky, "Social Change and the Law of Industrial Accidents," *Columbia Law Review* 67, no. 1 (1967): 50–82; Nate Holdren, *Injury Impoverished: Workplace Accidents, Capitalism, and Law in the Progressive Era* (New York: Cambridge University Press, 2020); Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Belknap Press: An Imprint of Harvard University Press, 2000), chap. 6; Michael K. Rosenow, *Death and Dying in the Working Class, 1865-1920*, Working Class in American History (Urbana, IL: University of Illinois Press, 2015); Theda Skocpol, *Protecting Soldiers and Mothers* (Harvard University Press, 2009), chap. 3; John Fabian Witt, "The Transformation of Work and the Law of Workplace Accidents, 1842-1910," *The Yale Law Journal* 107, no. 5 (1998): 1467–1502; Witt, *Accidental Republic*.

[18] The phrase "wage labor society" is attributable to Glickman, *A Living Wage*, xiii. Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* (New York: Oxford University Press, 2001), 26.

[19] Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge, MA: Harvard University Press, 2002), 76.

working-class history," disability, I argue, offers a unique lens for thinking through the accident crisis and its proposed solutions.[20] Where previous scholarship has focused on the legal innovations that emerged in response to the crisis and their impact on what labor historian David Montgomery refers to as the "rapid evolution and diffusion of managerial practice," I focus instead on the accident crisis as a site around which the *meaning* of disability and its relation to work was being negotiated and redefined.[21] Set against a broader preoccupation with devising "increasingly complex system[s] of diagnosis and classification"—through which medical professionals and reformers attempted to control the deviant, feeble-minded, and epileptic—efforts to redefine what "counted" as a compensable workplace disability were about more than just the limits of corporate responsibility.[22] Rather, these debates evinced broader anxieties about the changing nature of work—both the increasing dominance of wage labor and the rise of new managerial techniques, as well as the worry that these transformations posed a distinct threat to the dignity of work and, by extension, to white working-class masculinity. Where existing scholarship has tended to treat the accident crisis as distinct from concurrent developments in the treatment, management, and control of the so-called "defective classes," viewing these developments in tandem, I argue, allows us to see the ways in which work-related disabilities, too, were being recast and redefined.[23] Just as "social danger"—sexual promiscuity, shiftlessness, and social deviance—was being "codified within psychiatry as illness," so too did work injury and its classification become a site around which anxieties about rapid social and economic change were regulated and controlled.[24]

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[20] Sarah F. Rose, "'Crippled' Hands: Disability in Labor and Working-Class History," *Labor* 2, no. 1 (Spring 2005): 28.
[21] Montgomery, *Workers' Control in America*, 5.
[22] Carey, *On the Margins of Citizenship*, 49.
[23] George Howard Parker, "The Eugenics Movement as Public Service," *Science* 41, no. 1053 (March 5, 1915): 342.
[24] Michel Foucault, "5 February, 1975," in *Abnormal: Lectures at the Collège de France 1974-1975*, by Michel Foucault, ed. Valerio Marchetti and Antonella Salomoni, trans. Graham Burchell (New York: Verso, 2003), 119.

At once defining disability in opposition to the capacity to work *and* as an expected outcome of wage labor, negotiations over the boundaries of disability (both work-related and not) became a way to manage the risk of industrial employment. This dual refiguration was accomplished in two ways. First, by setting aside the question of fault, compensation statutes normalized accidental injury and death as regrettable but necessary aspects of industrial progress that could be addressed (if not prevented) through compensation. Second, as the Treiman case illustrates, the recognition of *some* accidental injuries and deaths as compensable rendered other injuries and their consequences illegible as a result. This was particularly true of injuries that "develop[ed] gradually," either as the "result of long-continued overwork or strain," or, as in Treiman's case, as the consequence of a progressive disease whose cause could not be fixed to a specific event or point in time—that is, to a discrete "accident." While both accidental injury and "long-continued overwork or strain" were disabling, whether they counted as compensable disabilities remained open to contestation. How one resolved this distinction between the disabled and the disabling effects of work, I argue, was crucial to fortifying working class manhood against the threat of "gender subversion" posed by the wage system.[25]

I will begin by situating the accident crisis within a more general preoccupation with the management and control of those deemed abnormal or deviant, showing how both can be viewed as responses to the social and economic upheaval that characterized the turn of the twentieth century. Turning to consider the accident crisis in more detail, I proceed to show how efforts to respond to the crisis—most notably workmen's compensation statutes—recast accidental injury and death as expected components of industrial labor at the same time that they obscured the slower disabling effects of wage labor. Neither legible as compensable disabilities nor figured as

[25] Glickman, *A Living Wage*, 44.

risks of employment, these forms of wearing down were better thought of as expected features of manual and factory-based work. Whereas the notion of risk implies some measure of uncertainty or chance, the bodily wearing out that I will focus on here is not "a latent side effect," but rather an implicit, and, as the development of labor law will show, accepted component of wage labor.[26]

To better understand *how* this process of normalization and incorporation occurred, I turn in the final section to contemporaneous arguments in favor of women-only protective labor legislation that, like compensation laws, sought legal grounds for efforts to improve the lives of industrial workers. Understood by many reformers as the first step on the path toward securing protective legislation for *all* workers, claims to the necessity of women-only legislation nevertheless relied on what were thought to be innate differences between women and men, the most prominent being women's status as existing or potential mothers. While much has been written about women-only labor legislation and its legacies, what interests me here are the ways that arguments in favor of protective labor legislation remade conditions of labor that affected all workers—particularly industrial fatigue and the effects of overwork—as uniquely injurious to women. Focusing on the feminization of these conditions, I look to what has become known as the "Brandeis brief" submitted by Louis Brandeis in the case of *Muller v. Oregon*—a 1906 Supreme Court Case contesting an Oregon law limiting the hours of women working in factories, laundries, and other manual employments—to show how the brief's emphasis on the disastrous health consequences of long hours on the "special physical organization" of women unwittingly made permissible the same conditions for men. If women required special protection from "the injurious effect[s] of constant labor at long hours," men, it was assumed, were better able to

[26] Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage Publications, 1992), 34.

endure the "intense, constant, and prolonged muscular efforts" that were required of all industrial laborers.[27]

Cripples, The Feebleminded, and the Merely Worn Out

According to Deborah Stone, the concept of disability is critical to sustaining the distinction between work- and need-based distributive systems. A "validation device" that ensures that those so identified have a "legitimate rationale for nonparticipation in the labor system," the category of disability must also, she argues, "maintain the dominance of the primary [work-based] distributive system." In other words, *who* qualifies as disabled is as much about the abilities or capacities of the individual in question as it is about shoring up the boundaries that define and maintain the "primary work-based system."[28] Indeed, "the very act of defining a disability category," writes Stone, "determines what is expected of the nondisabled—what injuries, diseases, incapacities, and problems they will be expected to tolerate in their working lives."[29]

Although Stone situates her argument in response to the rising concern occasioned by the proliferation and expansion of disability entitlements programs in the late 1970s and early 1980s, her analysis is equally relevant to considering the dual dynamics of exclusion and institutionalization that marked the shifting boundaries of the category of disability in the early twentieth century. Responding to growing anxiety about the long-term moral and societal consequences of rapid social and economic change, Progressive Era definitions of disability were

[27] Louis D. Brandeis and Josephine Goldmark, *Women in Industry: Decision of the United States Supreme Court in Curt Muller vs. State of Oregon Upholding the Constitutionality of the Oregon Ten Hour Law for Women and Brief for the State of Oregon*, Reprint (New York: National Consumers' League, 1908), 18, 22.
[28] Deborah A. Stone, *The Disabled State* (London: Macmillan, 1984), 22, 21.
[29] Stone, 4.

often capacious and, at least to present-day thinking, incoherent.[30] Serving as a convenient foil for broader concerns about the moral and social consequences of rising rates of immigration, urbanization, northern migration, and industrialization; physicians, eager to establish their professional authority, offered ever-more elaborate taxonomies of mental and physical abnormality in an effort to—as Harvard zoologist George Howard Parker put it—ensure "the production…of effective human beings."[31] Drawing upon the work of Francis Galton (who first coined the term "eugenics" in 1883) and Charles B. Davenport, what became known as the eugenics movement was preoccupied not only with "human betterment," but also—and relatedly—with the control and eventual eradication of those deemed "unfit."[32]

Distinguishing between the feebleminded, idiots, imbeciles (low, medium, high-grade, and moral), morons, epileptics, and the physically defective (among others), physicians, eugenicists, and reformers stoked fears of national decline that would likely follow should these "defectives" be allowed to remain amongst the general population.[33] Bolstered by genealogical

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[30] As Molly Ladd-Taylor notes, terms like "feebleminded and defective are…more expansive than present terms, like intellectual disability, because they include people whose differences would now be seen as cultural, socioeconomic, or psychological in origin." See Ladd-Taylor, *Fixing the Poor*, xi.

[31] Parker, "The Eugenics Movement as Public Service," 342.On the intersection of disability, immigration, race, and class at the turn of the century, see Douglas C. Baynton, *Defectives in the Land: Disability and Immigration in the Age of Eugenics* (Chicago, IL: University Of Chicago Press, 2016); McWhorter, *Racism and Sexual Oppression in Anglo-America*, chap. 5; Nancy Ordover, *American Eugenics: Race, Queer Anatomy, and the Science of Nationalism* (Minneapolis, MN: University of Minnesota Press, 2003), chap. 1; Barbara Young Welke, *Law and the Borders of Belonging in the Long-Nineteenth-Century United States* (New York: Cambridge University Press, 2010). On the professionalization of American medicine, see Paul Starr, *The Social Transformation of American Medicine: The Rise Of A Sovereign Profession And The Making Of A Vast Industry* (New York: Basic Books, 1983), chap. 3.

[32] Francis Galton, *Inquiries Into Human Faculty and Its Development* (London, UK: Macmillan and Co., 1883), 24. Galton derived the term from the Greek "*eugenes,* namely, good in stock, hereditarily endowed with noble qualities." See also Francis Galton, "Eugenics: Its Definition, Scope and Aims," *American Journal of Sociology* 10, no. 1 (July 1904): 1–25. For more on the eugenics movement, see Lombardo, *A Century of Eugenics in America*; McWhorter, *Racism and Sexual Oppression in Anglo-America*, chap. 5; Stern, *Eugenic Nation*.

[33] On these terms and their meanings, see Ladd-Taylor, *Fixing the Poor*, chaps. 1, 3; Carey, *On the Margins of Citizenship*, chap. 4; Licia Carlson, "Docile Bodies, Docile Minds: Foucauldian Reflections on Mental Retardation," in *Foucault and the Government of Disability*, ed. Shelley Tremain (Ann Arbor, MI: University of Michigan Press, 2005), 133–52; Trent, *Inventing the Feeble Mind*, chap. 5. For an example of a taxonomy of feeble-mindedness from this period, see Walter E. Fernald, "The History of the Treatment of the Feeble-Minded," in *Proceedings of the 20th National Conference of Charities and Correction* (Boston, MA: George H. Ellis, 1893); Alexander Johnson,

studies linking social pathology and heredity—most famously Richard Dugdale's *The Jukes* (1877) and Arthur Estabrook's follow-up, *The Jukes in 1915* (1916), Estabrook and Charles Davenport's *The Nam Family* (1912), and Henry Goddard's *The Kallikak Family* (1913)—anxieties concerning racial degeneration found purchase in eugenic theories that promised not just racial improvement, but also, through classification, institutionalization, and eugenic sterilization, the eventual eradication of such "undesirable stock."[34] Offering potent reminders of the "murderous atrocities, the cunning ingenuity, the degenerate licentiousness…perpetuated almost daily" by these defectives, Dr. Louis Bisch, a neurologist at the Clearing House for Mental Defectives at the New York Post-Graduate Hospital, saw the study and classification of defectives as key to "thoroughly master[ing] that which we are seeking to prevent."[35]

"Concerning a Form of Degeneracy," *American Journal of Sociology* 4, no. 3 (November 1898): 326–34.

[34] Richard Louis Dugdale, *"The Jukes": A Study in Crime, Pauperism, Diseases, and Heredity; Also, Further Studies of Criminals* (New York: G. P. Putnam's Sons, 1877); Arthur H. Estabrook, *The Jukes in 1915* (Washington, D.C.: The Carnegie Institution of Washington, 1916); Arthur Howard Estabrook and Charles Benedict Davenport, *The Nam Family: A Study in Cacogenics* (Cold Spring Harbor, N.Y.: Eugenics Record Office, 1912); Henry Herbert Goddard, *The Kallikak Family: A Study in the Heredity of Feeblemindedness* (New York: The Macmillan Company, 1912). The phrase "undesirable stock" is from Parker, "The Eugenics Movement as Public Service." This is a very truncated history of the eugenics movement and eugenic sterilization. For more on the movement, see Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity*; Lombardo, *A Century of Eugenics in America*. Challenging the implicit association between eugenics and sterilization, Molly Ladd-Taylor has shown how the actual practice of sexual sterilization was often less "a deliberate plan for genetic improvement than a mundane and all-too-modern tale of fiscal politics, troubled families, and deeply felt cultural attitudes about disability, welfare dependency, sexuality, and gender." See Ladd-Taylor, *Fixing the Poor*, 2.

[35] Louis E. Bisch, "Nearly 15,000,000 School Children Are Defectives," *The New York Times*, September 28, 1913, https://www.nytimes.com/1913/09/28/archives/nearly-i5000000-school-children-are-defectives-the-clearing-house.html.

An extension of the concept of industrial efficiency to "the business in which humanity is engaged," the quest for national efficiency found expression in efforts to arrive at a "scientific classification system" for defectives that might discern the precise physical and mental capabilities as well as the work capacities of each "type" (*fig. 1*).[36] Like the efficiency manager who "relie[d] entirely upon the data gained from the observation of many motions, timed to the tiniest fraction of a second," the "experienced investigator" could, through examination and

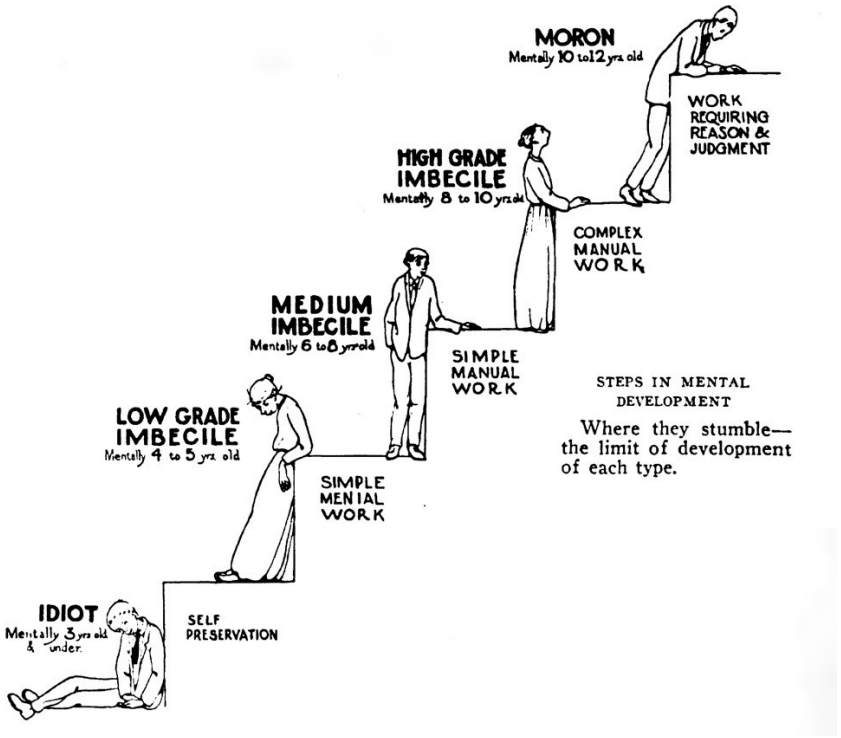

Figure 1: Mental-Age Chart from "Exhibit of Work and Educational Campaign for Juvenile Mental Defectives," The Survey 31, no. 2 (October 11, 1913), 50

classification, ensure the correct treatment of these "specimen[s] of human disorder."[37] In this way, defectives were recast as preventable inefficiencies whose rational treatment—contingent, of course, upon their correct diagnosis—would preclude their "vitiating and lowering the average

[36] Ladd-Taylor, *Fixing the Poor*, 88.
[37] Bisch, "Nearly 15,000,000 School Children Are Defectives."

standard of the race."[38] As economic historian Peter Miller observes of this discourse: "if such concerns were articulated at the level of the nation as a whole, it was held to be in 'private' locales, such as the factory, the school, and the home that the efficiency of the individual could be acted upon and optimised."[39]

Perhaps unsurprisingly, this attempt at "mastery" had uneven effects. At a moment in which physical and mental abnormality would have been everywhere apparent—whether readily visible in the bodies of Civil War veterans and injured industrial workers, contained within the walls of custodial institutions, or as an indeterminate threat attached variously to immigrants, minor criminals, beggars, inebriates, immoral women, and the so-called "shiftless poor"—classification schemes took on a heightened significance. Serving as a focal point for anxieties about the social and moral consequences of a rapidly changing industrial society, these schemes expressed both a faith in the ability of science to resolve social problems and a fear that such categories—no matter how fine-grained—would be insufficient to fend off national decline.

Recalling Stone's observation that the "very act of defining a disability category determines what is expected of the nondisabled," we might instead attend to the other side of this equation; that is, to the "injuries, diseases, incapacities, and problems…[the nondisabled] will be expected to tolerate in their working lives."[40] More than just a matter of economics—that is, of ensuring the ready availability of a workforce willing to take on dangerous, taxing, or otherwise undesirable jobs—the question of "what is expected of the nondisabled" speaks as well to how debility is constructed and experienced as an aspect of employment. Calling to mind Marx's

[38] Alexander Johnson, "Race Improvement by the Control of Defectives (Negative Eugenics)," *The Annals of the American Academy of Political and Social Science* 34, no. 1 (July 1909): 23.
[39] Peter Miller, "The Margins of Accounting," in *The Laws of the Markets*, ed. Michel Callon (Malden, MA: Blackwell Publishers, 1998), 187.
[40] Stone, *The Disabled State*, 4.

discussion of the working day, in which hours of labor are determined not by the "physical limits" or capacities of the worker, but rather by the "greatest possible daily expenditure of labour-power," Stone likewise highlights the disunity between the desire for an "objectively measurable" index of impairment and the "diseases, incapacities, and problems" that workers must nevertheless learn to tolerate as a condition of employment.[41] Although Stone does not dwell on this claim, her use of the language of toleration is significant, implying something to be endured, rather than a future whose elements remain open to chance.

Turning, in the next section, to the industrial accident crisis and the advent of workers' compensation legislation, I show how these legislative statutes, although aimed at alleviating the economic devastation wrought by accidental injury and death, simultaneously worked to obscure the slower, debilitating effects of work that were then made intrinsic to the labor contract. Pitting the continued "triumph of American manufactures and American mechanics" against the brutal consequences of this industrial dominance, reformers and politicians struggled to find a solution to the accident crisis that would be palatable to businessowners but still address the economic devastation wrought by industrial accidents.[42] Workmen's compensation, at least at first glance, seemed to answer to both of these concerns. Offering payouts to workers and their families regardless of fault, it simplified what had previously been a haphazard, and, in many cases, fraught process of securing compensation. Nevertheless, by removing the question of fault from the equation, workmen's compensation normalized accidents as a regrettable but necessary component of industrial progress. "Objectivizing [only] certain events as risks," it left others unaccounted for, neither readily locatable within the complex classificatory systems espoused by

[41] Marx, *Capital*, 376; Stone, *The Disabled State*, 108.
[42] George Thurston in Joshua B. Freeman, "Giant Factories," *Labour / Le Travail* 72 (2013): 185.

reformers nor legible as accidents worthy of compensation.[43]

Necessary Risks

Praised by fellow reformer Florence Kelley as "an epoch-making discussion of industrial industries," Crystal Eastman's *Work-Accidents and the Law*, published in 1911 as part of the Pittsburgh Survey, is often credited with the rapid adoption of state-level workmen's compensation statutes in the years that followed.[44] Drawing from coroners' reports, factory inspections, and interviews with victims, employers, family members, and co-workers, Eastman and her team of researchers pieced together a comprehensive account of all work-related deaths that occurred in Allegheny County between July 1906 to June 1907. Building from the "isolated facts" of individual accidents—a cracked bridge plank, a grain elevator floor that gave way, a rock fall in a coal mine—*Work Accidents and the Law* attempted to discern not just the *cause* of accidents, but their financial and social consequences for those left in their wake.[45]

Responding to the commonly-held belief that "95 per cent of…accidents are due to the carelessness" and heedlessness of the workmen, Eastman examines those fatalities—132 in all—

[43] François Ewald, "Insurance and Risk," in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago, IL: University Of Chicago Press, 1991), 200.
[44] Florence Kelley, "Our Lack of Statistics," *The Annals of the American Academy of Political and Social Science* 38, no. 1 (1911): 97. One of the first large-scale social surveys conducted in the United States, the Pittsburgh Survey (1907-14), led by reformer Paul Kellogg and funded by the nascent Russell Sage Foundation, was the product of a broader effort to use the tools of social science to understand the social and economic conditions that accompanied the rise of industrial capitalism. A snapshot of "the conditions of life and labor among the wage-earners of the American steel district," the survey offered a vivid portrait of the "desperate, unremitting toil" that formed the basis of America's growing industrial might. See Edward T. Devine, "Results of the Pittsburgh Survey," *American Journal of Sociology* 14, no. 5 (1909): 663. For more on the Survey and its impact, see Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy and the Poor in Twentieth-Century U.S. History* (Princeton, NJ: Princeton University Press, 2001), chap. 1; Edward Slavishak, *Bodies of Work: Civic Display and Labor in Industrial Pittsburgh* (Durham, NC: Duke University Press, 2008), chaps. 4–5; Stephen Turner, "The Pittsburgh Survey and the Survey Movement: An Episode in the History of Expertise," ed. Maurine W. Greenwald and Margo Anderson (Pittsburgh, PA: University of Pittsburgh Press, 1996), 35–49.
[45] Crystal Eastman, *Work-Accidents and the Law* (New York: Russell Sage Foundation Charities Publication, 1910), 5. Hereafter cited in text as *WAL.* For more on Eastman's involvement with the Survey, see Holdren, *Injury Impoverished*, chap. 2; Rose, *No Right to Be Idle*, 138–48; Rosenow, *Death and Dying in The Working Class*, chap. 4; Witt, *Accidental Republic*, chap. 5.

that were thought to be at least partially or wholly the responsibility of the victim (*WAL*; 84, 86). At first dismissing the need for further investigation— "there is little reason," she writes, "for lingering on this class of accidents"—she proceeds by interrogating the meaning of "what is called carelessness" in the context of the industrial workplace (*WAL*; 87, 84). Called upon to illustrate "deaths due to a condition on the part of the man killed," Reynolds "the epileptic" is described by Eastman as having fallen "in a fit upon a steam exhaust and inhaled steam until he died." Challenging the assumption that Reynolds, by virtue of his epilepsy, was responsible for his own death, Eastman suggests that it was economic necessity, and *not* carelessness or dissimulation, that lead to the man's unfortunate demise (*WAL*, 89).

A father of "four little girls under fourteen," Reynolds had previously "fallen from a crane and crippled his foot." Shortly after returning to work, he was found "lying on the railroad tracks just outside the steel works," (presumably after experiencing a seizure) at which point he was dismissed. Desperate for work, he returned to his previous employer and was "taken on again to do brass filing for a few months until he could find something else." Not having informed his employer of his condition—which would have meant permanent dismissal—Reynolds attempted to conceal its effects. Indeed, notes Eastman, "it was in an effort to hide his weakness that he met death, for when he felt the seizure coming on he got up quickly and went through a door to a place where no one could see him. It was there," she continues, "that he fell upon the steam exhaust" (*WAL*, 89).

If Reynolds might be held responsible for choosing an occupation for which his epilepsy rendered him "unfit," Eastman stresses that such assumed choices were very often not choices at all. Although the "dangerous trades" carried an increased risk of injury, this risk was offset, at least in theory, by a comparatively higher wage. That is, wages were adjusted to "cover the risk"

entailed in the work (*WAL*, 238). The father of "four little girls under fourteen," it was understandable that Reynolds would seek out a better paying, if more dangerous, position. "Seldom," as Eastman observes, were "such men…in a position to choose an occupation suited to their handicap (*WAL*, 89). As to what occupations these men might be better suited, however, Eastman offers few suggestions. Rather, they ought to be "protect[ed]…by a law setting certain physical standards for all those who seek employment in dangerous trades" (*WAL*, 90).

And yet, in using Reynolds to illustrate what she describes as "personal factor[s] in industrial accidents"—that is, those factors attributable to the ignorance, carelessness, or incapacity of the worker, rather than the negligence of their employer—Eastman effectively blurs the distinction between preventable and "necessary" (and therefore unavoidable) workplace risks (*WAL*, 84). Necessary risks were those entailed by the nature of the work itself—so-called "risk[s] of the trade" (*WAL*, 19). Preventable risks, on the other hand, were those that might have been avoided by the exercise of what New York Chief Justice Nelson referred to as "ordinary human care and foresight."[46] Carelessness, recklessness, and ignorance—no matter their causes or consequences—were not the fault of the company, and it was up to the worker to ensure that their conduct did not contribute to the already dangerous nature of their work. Unmentioned, of course, was the recklessness required of those employed in the dangerous trades. Indeed, writes Eastman, "Extreme caution is as unprofessional among the men in dangerous trades as fear would be in a soldier." She continues: "If a hundred times a day a man is required to take necessary risks, it is not in reason to expect him to stop there and never take an unnecessary risk (*WAL*, 93-4). The point is not, in other words, that "there will always be dangerous trades," but rather that the "reckless workman" is a necessary type—"a man whose naturally daring temper

[46] Chief Justice Nelson (NY) in *Harvey v. Dunlop* (1843), quoted in Oliver Wendell Holmes Jr., *The Common Law* (Boston, MA: Little, Brown, and Co., 1881).

has been selected, and then encouraged and accentuated, by an occupation involving constant risk" (*WAL*; 87, 94). There is, she concludes, "a kind of freedom and fearlessness which goes with rapid and dangerous work and is necessary to it" (*WAL*, 183).

Employers' tendency to dismiss the majority of workplace accidents as the consequence of either the danger inherent in a particular occupation or the "carelessness of the men" involved was characteristic of nineteenth-century common-law interpretations of employer liability, by which employees (and, by extension, their families) were made to bear the lion's share of the losses accompanying accidental injury and death (*WAL*, 84). While employers were expected to practice "due diligence in hiring and workplace management and organization, employees assumed both the risks entailed in the work as well as the risk of their co-workers' negligence (the so-called "fellow servant rule"). These "perils," as Massachusetts Supreme Court Chief Justice Lemuel Shaw wrote in his landmark 1842 opinion in *Farwell v. Boston & Worcester Railroad*, were not only 'incident to the service" performed, but were likewise "foreseen and provided for in the rate of compensation."[47]

An engine-man employed by the Boston and Worcester Railroad, Nicholas Farwell sought damages after losing his right hand in an engine derailment caused by a mislaid switch.[48] Acknowledging the switchman's error, the court nevertheless found in favor of the defendant, arguing that while it was the responsibility of the company to "construct and maintain a rail road," Farwell must instead "bear the loss himself." The "loss," wrote Shaw, "must be deemed to be the result of pure accident, like those to which all men, in all employments, and at all times,

[47] *Farwell v. Boston & Worcester Railroad*, 45 Mass. (4 Met.) 49, 52 (1842).
[48] The legal scholarship on *Farwell* is voluminous. For an overview of the ruling and its significance, see Friedman and Ladinsky, "Social Change and the Law of Industrial Accidents"; Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge, MA: Harvard University Press, 1979), 209–10; Amy Dru Stanley, "Dominion and Dependence in the Law of Freedom and Slavery," *Law & Social Inquiry* 28, no. 4 (2003): 1127–34; Christopher L. Tomlins, "A Mysterious Power: Industrial Accidents and the Legal Construction of Employment Relations in Massachusetts, 1800-1850," *Law and History Review* 6, no. 2 (1988): 375–438.

are more or less exposed."[49] By encompassing "all such risks and perils" within the "express or implied contract between the parties," Shaw made it such that workers, rather than their employers, shouldered the burden of industrial injury and its financial consequences.[50] In *Farwell,* writes Morton Horwitz, "the law had come simply to ratify those forms of inequality that the market system produced."[51] Absolved of liability for all but the most obvious cases of negligence, companies were left to pursue unfettered growth without concern for the casualties left in their wake.

The bases of Shaw's decision—that a worker's choice of employment was "a voluntary undertaking" and that the "perils" attendant upon that employment were "foreseen and provided for in the rate of compensation," already dubious in 1842, were, by the turn of the century, even more implausible. "It is absurd," wrote statistician Frederick Hoffman in 1909, "to speak of the workman's free will, the preferential selection of a dangerous over a non-dangerous employment, and it is also absurd to speak of it as being a matter of choice whether a man will or will not continue to follow a given occupation." Indeed, he continued: "we well know that to the vast majority of the men who toil there is no choice whatever in a matter of this kind."[52] If few workers earned wages that were sufficient to "meet the cost of a normal standard of health and

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[49] *Farwell v. Boston & W.R.R,* 45 Mass. (4 Met.) 49, 55, 59 (1842). Ruling that Farwell was "responsible for the 'peril' that had destroyed his right hand," Shaw departed from English common law principle of *respondeat superior*, by which masters assumed liability for negligence of a servant "while…employed in the master's service." Instead, Shaw passed the liability on to the worker, who, by virtue of the "express or implied [employment] contract" was assumed liable for the actions of his "fellow servant." According to Shaw, the "safety of each [worker] will be much more effectively secured…than could be done by a resort to the common employer for indemnity in case of loss by the negligence of each other." Here Shaw cites the English case of *Priestley v. Fowler* (1837), in which Charles Priestley, a butcher's servant, was seriously injured when an overloaded wagon driven by a fellow employee, overturned on the route from Market Deeping to Buckden. Ruling that Priestley was "not bound to risk his safety in the service of hist master, and may, if he thinks fit, decline any work in which he reasonably apprehends injury to himself." See *Priestley v. Fowler,* 150 Eng. Rep 1030 (Ex. 1837).
[50] *Farwell*, at 49, 56.
[51] Horwitz, *Transformation of American Law*, 210.
[52] Frederick L. Hoffman, "Industrial Accidents and Industrial Diseases," *Publications of the American Statistical Association* 11, no. 88 (1909): 573.

efficiency for a family," even fewer a had surplus enough to be used in the event of a permanent disabling injury or death.[53] The solution proposed by compensation legislation—that is, compensation regardless of fault—at once acknowledged the complexity of modern workplaces even as it conceded that accidental injury and death were necessary "risk[s] of modern industrial operations."[54] As Isaac Hourwich put it, "a certain number of lives are inevitably lost in the course of our modern industry—you cannot prevent it."[55]

Contemporary reformers and social commentators offered a range of explanations for the accident crisis. Some, like Minnesota Bureau of Labor representative Don Lescohier, cited the concentration of unskilled, non-English-speaking immigrant labor in the most dangerous trades.[56] Statistician Isaac Hourwich credited the "certain degree of carelessness" that was demanded of the worker by modern industry, while others denounced the "indifference" of employers to existing factory legislation.[57] Mostly, however, they laid blame on the relentless pace of American industry and what Eastman referred to as the "unremitting pressure for output" that placed economic profit before worker safety.[58] If U.S. industry was outpacing its European rivals, it also boasted much higher injury and fatality rates. Among coal miners, the fatality rate was "four times as high as in Austria, three times as high as in Belgium and France, and more

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[53] Rubinow, *Social Insurance*, 44.
[54] "Report to the Legislature of the State of New York by the Commission Appointed Under Chapter 518 of the Laws of 1909 to Inquire into the Question of Employers' Liability and Other Matters" (Albany, NY: J.B. Lyon Co, State Printers, 1911), 21.
[55] Isaac A. Hourwich testimony in "Report of the Industrial Commission on the Relations and Conditions of Capital and Labor Employed in Manufactures and General Business, Volume II" (Washington: Industrial Commission, 1900), 162. Hourwich was at the time a
[56] Gustavus Myers, "A Study of the Causes of Industrial Accidents," *Publications of the American Statistical Association* 14, no. 111 (1915): 678.
[57] Testimony of Isaac A. Hourwich, in "Report of the Industrial Commission on the Relations and Conditions of Capital and Labor Employed in Manufactures and General Business, Volume II" (Washington: Industrial Commission, 1900), 164; testimony of John H. McMackin in "Report of the Industrial Commission on the Relations and Conditions of Capital and Labor Employed in Manufactures and General Business, Including Testimony Taken After November 1, 1900, with Review and Digest Thereof, and a Special Report on Domestic Service" (Washington, D.C.: Industrial Commission, 1901), 813.
[58] Eastman, *Work-Accidents and the Law*, 114.

than twice as high in Great Britain."[59] Likewise, rail workers were nearly four times as likely to be killed and five times as likely to be killed as their British counterparts.[60]

Although compensation laws no doubt simplified and expedited the process of securing compensation, conceding to the near impossibility of locating fault in the large-scale, highly segmented industrial workplace, they effectively accepted that a certain amount of injury was a necessary aspect of industrial labor—neither the fault of the employer nor the worker, but, as one reformer put it, "inher[ing] in the work itself."[61] Further, holding employers responsible for workplace accidents and their financial consequences also meant acknowledging workers' increasing lack of autonomy and control within the workplace. If some workers still "clung to the myth that independence was within reach of any hardworking citizen," the turn toward legal remedies for "shop-floor conflict" lent a permanence to the wage-labor relationship that foreclosed a more sustained challenge to the consolidation of managerial control.[62]

By shifting the economic burden of accidental injury from the worker and his family to industry, workmen's compensation addressed the problem initially raised by Eastman in her discussion of Reynolds—namely, whether a worker, in seeking employment in a "dangerous trade," ought to be held responsible for his own injury or death. According to nineteenth-century common-law interpretations of accident liability, Reynolds was clearly at fault. Having "assumed the risk of injury" at the moment of his hiring, the proximate factors in his death—his efforts to hide his seizures as well as his financial desperation—mattered little. Workmen's compensation legislation, in contrast, removed the question of fault from the equation, arguing

[59] Witt, *Accidental Republic*, 26.
[60] Rosenow, *Death and Dying in The Working Class*, 26.
[61] Magnus W. Alexander, "What Should Be the Principal Provisions of a Workmen's Compensation Act? An Analysis and Suggestion" (New York: The Conference Board on Safety and Sanitation, February 1915), 2.
[62] Glickman, *A Living Wage*, 14. For more on collectivist alternatives, see Montgomery, *Workers' Control in America*.

that the complexity of the modern industrial workplace rendered fault "inadequate"—a legal holdover from a pre-industrial, agricultural era in which accidents were both simpler and more "infrequent."[63] As New York State Supreme Court Justice Mahlon Pitney argued, "[t]he causes of accident are often so obscure and complex that…it is impossible by any method correctly to ascertain the facts necessary to form an accurate judgment….In excluding the question of fault as a cause of injury, the [compensation] act in effect disregards the proximate cause and looks to one more remote—the primary cause, as it may be deemed—and that is, the employment itself."[64]

In suggesting that accidents were necessary, inevitable, and behaved according to recognized patterns, progressive reformers, as François Ewald might put it, "consider[ed] the event" of the workplace accident in a new light. That is, by arguing that these occurrences operated according to a "calculus of probabilities" that were at once knowable *and* beyond the employers' control, advocates of workmen's compensation not only absolved employers of direct responsibility for the injuries and deaths of their workers, but also left space within the employment relationship for the slower, less "eventful" debilitating consequences of industrial employment.[65] Illegible as compensable disabilities—in part because they could not be traced to discreet events—these conditions were experienced instead as a kind of "gradual breaking down and wearing out" of the body that was made over as "a necessary incident to…employment" and a life of "long-continued overwork or strain."[66]

Tracing the history of risk from its origins in marine insurance, Jonathan Levy shows

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[63] Hugh V. Mercer, "Legal Possibility of Workmen's Compensation Acts," in *Report of Atlantic City Conference on Workmen's Compensation Acts Held at Atlantic City, N.J., July 29-31, 1909*, 152.
[64] *New York Cent. R. R. v. White*, 243 U.S. 188; 197, 205 (1917).
[65] Ewald, "Insurance and Risk," 199.
[66] Wickersham, "'Is Injured' 'Whenever an Accident Occurs,'" 153.

how risk and the commodification of "perils, hazards, and dangers" emerged in the nineteenth century as a way of facing the uncertainties generated by the growth of industrial capitalism.[67] No mere "financial instrument," risk took on a moral valence, evolving alongside and in conjunction with contract freedom and self-ownership. "To assume a risk, to take it, make it your own, to master it, or even just to enjoy the existential thrill of it," writes Levy, "was a birthright of the democratic soul, a soul born in commerce."[68] Of course, this is not to deny that the ability to manage personal risks varied widely according to one's race, gender, or position in society, or that, like contract freedom, the freedom implied by the assumption of risk often elided these distinctions. Indeed, this was a freedom that acceded to the demands of capitalism, or, pace Levy, freedom "articulat[ed]…in a commercial vernacular."[69] Captured in this formulation is the suggestion that risk is, at least in some limited sense, a privilege that entails a specific orientation toward the future, even if this "privilege" only succeeds in exposing the thinness of the concept of individual autonomy upon which it is based.

In describing risk as a "technology," Ewald emphasizes the conceptual and creative aspect of risk making, showing how risk emerges as a way of perceiving, ordering, and giving form to an uncertain future. Risk, he notes, "designates neither an event nor a general kind of event occurring in reality (the unfortunate kind)." Whether something becomes a risk, Ewald continues, "depends on how one analyzes the danger, considers the event."[70] If workmen's compensation succeeded in remaking the industrial accident, it did so by rendering accidents as "statistically describable and hence 'calculable' event types," and, in so doing, gave form to a

[67] Levy, *Freaks of Fortune*, 4.
[68] Levy, 18.
[69] Levy, 49.
[70] Ewald, "Insurance and Risk," 199.

shifting understanding of the relationship between workers and their employers.[71]

To the extent that workmen's compensation legislation forced employers to assume responsibility for the health and safety of the workers in their employ, this was achieved by "internalizing accident costs to the enterprise"—that is, by making accidents more expensive for employers. Declaring the "vast number of accidents" to be "positively inevitable under the pressure of competition," John McMackin, New York's commissioner of labor statistics, dismissed "laws for the prevention of accidents" (such as safety and inspection laws) as ineffective, and, to a certain extent, pointless. "The underlying principle of these workmen's compensation acts," as he explained to the members of the Federal Industrial Commission in 1900, "is the demonstrated fact that most accidents are an incident of the industry rather than the fault of individuals."[72] While reformers no doubt hoped that the incentives built into compensation legislation would encourage companies to comply with safety regulations—if for no other reason than to do so would lower their insurance costs—they seemed to agree with Eastman that "the state…[could] do little in a direct way" to intervene in the employment relationship (*WAL*, 106). Rather, laws should appeal to "the will" and the "direct economic interest…[of] the employer" (*WAL*; 110, 114). Whatever the initial hopes of reformers and policymakers, admits historian Steve Sturdy, "employers generally found it easier to pay the requisite compensation than to tackle the managerially more demanding task of making work safer."[73]

And yet, the adoption of workmen's compensation statutes was not just about simplifying

[71] Ulrich Beck, *World at Risk* (Malden, MA: Polity Press, 2007), 7.
[72] Testimony of John H. McMackin, in "Report of the Industrial Commission on the Relations and Conditions of Capital and Labor Employed in Manufactures and General Business, Volume II," 817.
[73] Steve Sturdy, "The Industrial Body," in *Companion to Medicine in the Twentieth Century*, ed. Roger Cooter and John Pickstone (New York: Routledge, 2000), 227.

what had become, by the turn of the century, a costly and time-consuming process for both workers and employers. Nor was it solely a matter of adapting existing work accident law to accommodate "the risk[s] of modern industrial operations."[74] Rather, the turn to compensation statutes reflected the shifting terrain of work—at once acknowledging the inequalities and coercions intrinsic to wage labor while still hewing to traditional interpretations of the inviolability of the labor contract.[75] Recognizing employers' financial obligation to their injured employees, these statutes laid bare the fictions of the free labor contract, legally codifying relations of domination and subordination within the employment relationship while also offering inroads for the imposition of "new technologies of [worker] control."[76] Demanding only minimal adjustments by employers (who, for the most part, were able to pass the costs of insurance onto consumers) workmen's compensation effectively conceding to employers' claims that accidents, while unfortunate, were the inevitable consequence of large-scale industrial production.

Of course, the idea that work is disabling is not new. Nor is it surprising that industrial production would be especially injurious. "Modern industry," wrote Isaac Rubinow in 1913, "has either created new dangers or aggravated old ones, so that the rare accidents of older centuries have become every-day occurrences of the present time."[77] Acknowledging the difficulty of assigning responsibility for these accidents, Rubinow, one of the leading authorities on social insurance, nevertheless dismissed those that would place the blame on "the hazard[s] of industry." To do so, he objected, was to be so vague as to offer "no explanation at all."[78] And

[74] "Report to the Legislature of the State of New York by the Commission Appointed Under Chapter 518 of the Laws of 1909 to Inquire into the Question of Employers' Liability and Other Matters," 21.
[75] For more on the idea of voluntarism and voluntary organization, see Kessler-Harris, *In Pursuit of Equity*, chap. 2.
[76] Witt, "The Transformation of Work and the Law of Workplace Accidents, 1842-1910," 1484.
[77] Rubinow, *Social Insurance*, 71.
[78] Rubinow, 73.

yet, by removing fault from the equation, workmen's compensation legislation essentially extended this hazard principle to cover *all* accidents, reframing accidental injury as "a necessary part of the cost of production" that was best dealt with after the fact.[79] "Indeed," Rubinow continued, "there is nothing fortuitous or unexpected" about industrial accidents; they are, rather, "a definite and constant characteristic of modern industry, subject to well recognized rules and laws."[80]

Speaking as a statistician, Rubinow had an investment in discerning the "rules and laws" that governed industrial accidents, but he also captures the way compensation laws transformed what had previously been discrete (if devastating) accidental events into probabilistic certainties. As he put it, succinctly, "an industrial accident is not an accident at all."[81] No longer simply "hazards of industry," industrial accidents were made knowable through the calculation of each worker's "personal 'risk'," which, as Jonathan Levy notes, "could then be offloaded onto an insurance corporation."[82] Rather than requiring workers to assume the risks of hazardous occupations, worker's compensation commodified that risk, offering a "financial solution to the peril at hand."[83] This "making of risks," to speak with Dan Bouk, fundamentally shifted the way workers, as well as their employers, responded to the injured and disabled body.[84]

Conceding the impossibility of accurately locating fault within the employment relationship, reformers turned instead to the body of the worker as the primary determinant of risk. Indeed, as Nate Holdren and Sarah Rose have shown, it was this quantification of risk at the level of the worker's body that led, ultimately, to the perception of disabled workers as not just

[79] Rubinow, 103–4.
[80] Rubinow, 50.
[81] Rubinow, 49.
[82] Levy, *Freaks of Fortune*, 13.
[83] Levy, 11.
[84] Dan Bouk, *How Our Days Became Numbered: Risk and the Rise of the Statistical Individual* (Chicago, IL: University of Chicago Press, 2018), xx.

less productive but "unemployable."[85] Thought to be more prone to accidents, the high cost of insuring aged and disabled workers drove their further exclusion from the industrial workforce. Where disabled people had already struggled to find competitive employment, workmen's compensation formalized and gave credence to what had previously been only commonplace assumptions about their carelessness and insufficiency. For Rose, this development marks a profound shift in the treatment of disabled workers, even if its precise impact (in terms of number of people excluded) remains unknown. "Provid[ing] employers with convincing and publicly acceptable rationales for screening out people with disabilities from their workforce," she writes, "workmen's compensation laws unexpectedly reinforced employers' growing skepticism about disabled workers. Perversely, while attempting to solve the problem caused by industrial accidents, policy makers rendered disabled people dependent."[86]

And yet, while I agree with Rose that compensation statutes likely did provide an incentive for employers to "screen out" otherwise productive disabled workers, I am wary of overemphasizing the exclusionary tendencies of these laws. Rather, I see the passage of workmen's compensation as unifying several different—and oftentimes contradictory—strands in our thinking about the relationship between work, disability, and dependence. If workmen's compensation offered some measure of financial security to injured workers and their families, it did so not by intervening in the employment relationship, but instead by mitigating the individual effects of industrial accidents *after* they had already occurred. To the extent that this legislation "reinforced employers' growing skepticism about disabled workers' abilities," as Rose and

[85] Nate Holdren, "Incentivizing Safety and Discrimination: Employment Risks under Workmen's Compensation in the Early Twentieth Century United States," *Enterprise & Society* 15, no. 1 (2014): 31–67; Holdren, *Injury Impoverished*; Rose, *No Right to Be Idle*; Rose, "Crippled Hands." The reference to disabled workers as "unemployable" can be found in Rose, *No Right to Be Idle*, 166.
[86] Rose, *No Right to Be Idle*, 9.

Holdren both show, it also shifted the focus from the structure and organization of the workplace as a sight of injury to the body and capacities of the prospective worker.[87]

Assuming, first, that accidents were an inevitable aspect of industrial production that remained beyond the reach of government regulation; and second, that these accidents could be "rendered easily knowable and valuable in dollars," workmen's compensation tacitly permitted—even as it obscured—the gradual breakdown of the worker that was incident to their employment.[88] Legible neither as compensable "events," nor as work-disqualifying disabilities, these modes of disablement might be better thought of as the residue of what soon-to-be Supreme Court Justice Felix Frankfurter referred to as "the stress and strain of American ways of living."[89] Turning, in the next section, to contemporaneous efforts to secure protective labor legislation for women workers, I show how arguments in support of this legislation, by relying on women's unique susceptibility to industrial overwork, made permissible the same debilitating conditions for men, who were considered more able to withstand the rigors of the industrial workplace.

The Seeds of Unhealthiness

Upholding a 1903 Oregon law limiting the hours of women employed in factories, laundries, and "mechanical establishments" to ten hours a day, 1908's *Muller v. Oregon* marked what many regard as a sea-change in the Supreme Court's stance toward protective labor legislation.[90] The proprietor of the Grand Laundry in Portland, Oregon, Curt Muller had been convicted of violating the hours law after requiring his employee, Emma Gotcher, to work in

[87] Rose, 124; Holdren, "Incentivizing Safety and Discrimination."
[88] Holdren, *Injury Impoverished*, 112.
[89] Holdren, 112.
[90] *Muller v. Oregon*, 208 U.S. 412 (1908).

excess of ten hours.[91] Just three years earlier, in 1905's *Lochner v. New York*, the Court had struck down a New York state law that regulated the hours of bakery employees, finding that the statute interfered with the right of contract as protected by the Due Process Clause of the Fourteenth Amendment—the same charge Muller levied against the Oregon Law.[92] Notwithstanding evidence of the "unhealthful character of the baker's occupation," the Court had nevertheless ruled that this did not bear on the "safety, health, morals and general welfare of the public," and thus did not constitute a valid exercise of the State's police power (by which it might otherwise regulate the right of contract).[93] As Justice Rufus W. Peckham famously argued in his opinion for the Court: "Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week."[94] Indeed, insofar as "almost all occupations more or less affect the health," it followed that "labor, even in any department, may possibly carry with it the seeds of unhealthiness."[95]

Of course, there were occupations—most notably mining—that *were* considered hazardous enough to justify state involvement. Indeed, the Court's ruling in *Holden v. Hardy* (1898) upheld a Utah law regulating the hours of labor of workers in underground mines and smelters, finding that the "peculiar conditions" of this work "produce[d] morbid, noxious and

[91] The literature on *Muller*, and especially the ruling's longer-term consequences for women's equality in the workplace, is vast. For background on the case, see especially Ruth Bader Ginsburg, "Muller v. Oregon: One Hundred Years Later," *Willamette Law Review* 45, no. 3 (2009): 359–80; Julie Novkov, *Constituting Workers, Protecting Women: Gender, Law and Labor in the Progressive Era and New Deal Years* (Ann Arbor, MI: University of Michigan Press, 2001), chap. 3; Robert D. Johnston, *The Radical Middle Class: Populist Democracy and the Question of Capitalism in Progressive Era Portland, Oregon* (Princeton, NJ: Princeton University Press, 2003), chap. 2; Nancy Woloch, *Muller v. Oregon: A Brief History with Documents* (Boston, MA: Bedford Books of St. Martin's Press, 1996); Nancy Woloch, *A Class by Herself: Protective Laws for Women Workers, 1890s–1990s*, *A Class by Herself* (Princeton, NJ: Princeton University Press, 2015), chap. 3.
[92] *Lochner v. New York*, 198 U.S. 45 (1905). A bakery owner in Utica, New York, Joseph Lochner was convicted for keeping an employee beyond the ten hours mandated by an 1895 state law regulating the hours of labor in bakeries and confectionaries.
[93] *Lochner*, at 51, 53.
[94] *Lochner*, at 57.
[95] *Lochner*, at 59.

often deadly effects in the human system."[96] However, to suggest that "the occupation of baker or confectioner was unhealthy" in the same way as an underground mining was unhealthy was, for Peckham, untenable.[97] Imagining a nation overrun by regulation, with laws prohibiting even "professional men" from "fatigu[ing] their brains and bodies by prolonged hours of exercise," Peckham dismissed hours laws as "mere meddlesome interferences" into the rights of "grown and intelligent men," who, he presumed, were more than capable of "assert[ing] their rights and car[ing] for themselves without the protecting arm of the State."[98]

While it might be objected that "clean and wholesome bread" does, in fact, bear a significant relation to the conditions in which the baker works, (and, indeed, Justice Harlan's dissent attested to this fact) the crucial point for Justice Peckham was that the statute was not, properly speaking, a health law, but rather a means of regulating hours.[99] As such, it treated the employee—"a grown and intelligent man" who is "equal in intelligence and capacity to men in other trades"—*as if* he were a ward of the state.[100] Whereas this incursion was permissible in the case of more dangerous trades, to refer to baking as such was, for Peckham, a stretch. "[T]hat labor may possibly carry with it the seeds of unhealthiness" was not for the state to regulate. Certainly, physicians were unlikely to "recommend the exercise of…[baking] or any other trade as a remedy for ill health," but it did not follow that legislative interference was necessary.[101] Rather, whatever health consequences might follow from a baker's occupation were recast as

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[96] *Holden v. Hardy*, 169 U.S. 396 (1898). Justice Brown, who wrote the opinion for the majority, further clarified that the ruling did not thereby permit hours regulations tout court, but only in cases where "the legislature had adjudged that a limitation is necessary for the preservation of the health of employés, and there are reasonable grounds for believing that such determination is supported by the facts." See *Holden,* at 398.
[97] *Lochner*, at 58.
[98] *Lochner*, at 60-61, 61.
[99] Quoting extensively from Dr. Ludwig Hirt as well as other treatises on what was then known as "industrial hygiene," Justice Harlan argued that striking down the New York statute "would seriously cripple the inherent power of the States to care for the lives, health, and well-being of their citizens." See *Lochner*, at 73.
[100] *Lochner*, at 57.
[101] *Lochner*, at 59.

aspects of his right "to liberty of person and freedom of contract."[102] It is this permissibility of injury and its relation to a gendered conception of personal liberty, I argue, that is reaffirmed by *Muller v. Oregon.*

Seeking counsel in defending the 1903 statute before the Supreme Court, the state's attorneys reached out to the National Consumers' League (NCL), led by Florence Kelley. Long involved in efforts to improve the lives of wage-earning women, the NCL had placed itself at the forefront of the fight for protective labor legislation for women.[103] Enlisting the aid of Boston lawyer (and later Supreme Court Justice) Louis Brandeis, who agreed to act as special counsel on Oregon's behalf as well as present oral argument before the Supreme Court, NCL members—most notably Josephine Goldmark (Brandeis' sister-in-law)—worked alongside Brandeis in preparing what would become known as "The Brandeis Brief." At 113 pages, the brief is a compendium of existing research and prevailing opinion on the dangers of long hours for women. Drawing from an eclectic assortment of textbooks, academic treatises, commission and factory inspection reports, as well as conference proceedings from both Europe and America, it offers little in the way of original argument. Instead, the brief is what Brandeis had hoped it would be, that is "facts…published by anyone with expert knowledge of industry in its relation to women's hours of labor."[104]

Reflecting on *Muller's* legacy, Justice Ruth Bader Ginsburg describes the brief as "unlike any the court had seen," due both to its length as well as its method of argument.[105] Relying on the facts in favor of the legislation rather than legislative precedent (as was typical at the time),

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[102] *Lochner*, at 57.
[103] Founded in 1899, the NCL initially focused on promoting ethical buying practices among educated, middle-class women, before pursuing legislative activism. For more on the NCL, see Landon R. Y. Storrs, *Civilizing Capitalism: The National Consumers' League, Women's Activism, and Labor Standards in the New Deal Era* (Chapel Hill, NC: University of North Carolina Press, 2000), chap. 1; Woloch, *A Class by Herself*, chap. 1.
[104] Louis Brandeis, quoted in Woloch, *A Class by Herself*, 64.
[105] Ginsburg, "Muller v. Oregon: One Hundred Years Later," 362.

Brandeis sought to persuade the Court of the effects of women's overwork not just to their own health, but to public health more broadly. The brief, echos Martha Minow, "marked a creative shift for the Court, introducing the use of vivid, factual detail as a way to break out the formalist categories dominating the analysis."[106]

Insofar as reformers hoped that *Muller* would pave the way toward eventual sex-neutral labor legislation, however, the Brandeis brief seemed to contradict these goals. Recognizing that the Oregon law would "not be sustained if the Court can see that it has no real or substantial relation to public health, safety, or welfare," Brandeis, as Nancy Woloch argues, did not so much challenge *Lochner* as "t[ake] advantage of an opening that *Lochner* provided."[107] As argued by Peckham in *Lochner*, "The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation."[108] The task for Brandeis and his NCL colleagues was to prove that hours laws, when directed at women, were necessary to safeguarding public health (and thus justified the abrogation of women's right to contract their labor).

Highlighting the "dangers of long hours" to women workers, the brief suggested that such dangers emerged out of "[women's] special physical organization"—that is, not just their "anatomical and physiological differences"—but what Brandeis described as their relative weakness "in *all* that makes for endurance: in muscular strength, in nervous energy, in the powers of persistent attention and application."[109] "Women," argued one Nebraska report quoted in the brief, "are unable, by reason of their physical limitation, to endure the same exhaustive

[106] Martha Minow, "The Supreme Court, 1986 Term-Forward: Justice Engendered," *Harvard Law Review* 101, no. 1 (1987): 88–89.
[107] Brandeis and Goldmark, *Women in Industry*, 9; Woloch, *A Class by Herself*, 64.
[108] *Lockner*, at 57.
[109] Brandeis and Goldmark, *Women in Industry*, 18.

labor as may be endured by men. Certain kinds of work which may be performed by men without injury to their health would wreck the constitution and the health of women."[110] This physical inferiority, in turn, rendered them increasingly susceptible to not just "industrial poisons and diseases," but also to what Brandeis referred to as "the growing strain of modern industry."[111]

Although the brief acknowledged that this strain could lead to "physical deterioration and mental worry" for *all* laborers, and not just women, this was not simply a matter of degree.[112] That is, the issue was not that "industrial labor…[was] more injurious to women than men," but that the "deterioration of their [women's] health is attended with far more injurious consequences to society."[113] Of particular concern were the "disastrous" effects of industrial labor and overwork on women's capacity to bear and raise children. In addition to "pelvic disorders" and difficulty conceiving, the sources quoted in the brief tied long hours to a heightened risk of premature birth, increased rates of infant mortality, and neglect—"the general conditions prevailing in women's labor…exerting its baneful influence of the individual and on the home."[114] And while "deterioration of any portion of the population inevitably lowers the entire community physically, mentally, and morally," this tendency was believed to be more pronounced among women. Indeed, "when the health of women has been injured by long hours, not only is the working efficiency of the of the community impaired, but the deterioration is handed down to succeeding generations. Infant mortality rises, while the children of married working-women, who survive, are injured by inevitable neglect. The overwork of future

[110] Report of the Nebraska Bureau of Labor and Industrial Statistics, 1901-1902, quoted in Brandeis and Goldmark, 20.
[111] Brandeis and Goldmark, 22, 24. The first quote is attributable to George Price (Medical Sanitary Inspector, Health Department of the City of New York), while the second is from Brandeis.
[112] Allen Clarke quoted in Brandeis and Goldmark, 26.
[113] Theodore Weyl and Hutchins and Harrison, quoted in Brandeis and Goldmark; 21, 22.
[114] George Newman, quoted in Brandeis and Goldmark, 42.

mothers," Brandeis concluded, "directly attacks the welfare of the nation."[115] This was no mere sentimentalism; rather, it stemmed from the belief that "family life," insofar as it was thought to "determine[] the quality of the rising generation as efficient or non-efficient wealth producers," ought to be protected against market incursion.[116] "The state," another source agreed, "has a vital interest in securing for itself future generations capable of living and maintaining it."[117]

Notwithstanding Curt Muller's objection that the Oregon statute was only "ostensibly framed in [women's] interests" and was instead "intended…to limit and restrict her employment," the Court upheld the law on the basis that it preserved not just women's "physical wellbeing" but that of her current and potential children as well.[118] Justifying this incursion onto women's freedom of contract as a matter of public health, Justice Brewer elaborated: "As healthy mothers are essential to vigorous offspring, the physical well-being of the woman becomes an object of public interest and care in order to preserve the strength and vigor of the race."[119] Drawing upon stereotypical assumptions about "woman's physical structure," as well as her necessary "dependen[ce] upon man," Brewer famously defended protective legislation on the grounds that women were neither physically nor socially "upon an equality" with men. Rather, "she is properly placed in a class by herself."[120] Just as men's intelligence and capacity secured their right to freely contract their labor, so too did women's "special physical organization" and status as potential mothers become the ground upon which the Court upheld the infringement of their contract rights. To the extent that the state was concerned with the conditions of women's

[115] Brandeis and Goldmark, 47.
[116] Report of the New York Bureau of Labor Statistics (1900), quoted in Brandeis and Goldmark, 48.
[117] Theodore Weyl, quoted in Brandeis and Goldmark, 49.
[118] Curt Muller, quoted in Johnston, *The Radical Middle Class*, 22. Muller further suggested that such statutes would, by restricting women's employment "enlarg[e] the field and opportunity of her competitors among men." Praising Muller's "prescient insight into the logic of sexual equality," Woloch remarks on the similarities between the brief for Muller and "contemporary equal rights arguments." See Woloch, *Muller v. Oregon*, 34.
[119] *Muller*, at 421.
[120] *Muller*, at 422.

labor, then, this was only insofar as it both reaffirmed her subordinate economic and social status *and* ensured—through her continued "vigorous health"—"the future well-being of the race."[121]

Retrospectively cast as instantiating women's "inferior legal status" *Muller v. Oregon*, writes Reva Siegal, "has led a varied life": "Initially viewed as a victory for labor, reflecting the emergence of social realism in constitutional jurisprudence, by the 1970s *Muller* was attacked as an exemplar of sexist and paternalistic reasoning, the regime of sex-based distinctions it sanctioned challenged by women demanding formal equality at law."[122] Woloch has likewise remarked on *Muller*'s "double life in constitutional history—as both a step forward on the road to modern labor standards and a step backward away from sexual equality."[123] Alice Kessler-Harris is less forgiving, linking the concern with women's roles as mothers to the continued maintenance of men's economic independence. "Preserv[ing] woman's body, mind, and morals for home roles," *Muller* (and women-only protective labor legislation in general) argues Kessler, "reflected a discourse of male prerogative and female dependence that participated in, and perpetuated, a range of public policies that reaffirmed racialized and gendered claims to jobs and citizenship."[124]

And yet, while I agree with Kessler-Harris that protective labor laws for women buttressed men's claims to economic citizenship, the inviolability of men's right to contract embodied in these laws contains within it a tacit acceptance of what Josephine Goldmark—the co-author of the brief—referred to as the "more subtle injuries of modern industry."[125] To the

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[121] *Lochner*, at 422. This concern with the "future well-being of the race," as Alice Kessler-Harris points out, accords with "a growing eugenics movement and concern about "race suicide" in the early years of the twentieth century. See Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* (New York: Oxford University Press, 1982), 185.
[122] Reva Siegel, "Book Review: Origins of Protective Labor Legislation for Women: 1905–1925, By Susan Lehrer," *Berkeley Women's Law Journal* 3 (1988): 171.
[123] Woloch, *Muller v. Oregon*, 4.
[124] Kessler-Harris, *Out to Work*, 185; Kessler-Harris, *In Pursuit of Equity*, 34.
[125] Josephine Goldmark, *Fatigue and Efficiency: A Study in Industry* (New York: Russell Sage Foundation Charities

extent that women ought to be protected against "the dangers of long hours," then, the grounds of this claim—women's "special physical organization" and status as mothers (or potential mothers)—prevented further interrogation of the forces driving women's overwork, focusing instead on its physiological effects.[126] The issue was not, in other words, with the work itself, but with women's bodies. "Badly constructed for the purposes of standing eight or ten hours upon her feet," and "unable to endure the same hours of exhaustive labor as may be endured by adult males," women were ill-suited for industrial labor.[127] Indeed, "[c]ertain kinds of work which may be performed by men without injury would wreck the constitution and destroy the health of women."[128]

Conclusion

Revisiting the industrial accident crisis of the early twentieth century, this chapter has shown how the meaning of disability and its relationship to work was being negotiated and redefined in relation to the injured body. Where previous scholarship in labor history and disability studies has tended to focus on the progressive *exclusion* of disabled workers from the workforce (and from the industrial factory in particular), I have traced an alternative, if not entirely distinct, history that demonstrates how disability was defined both in opposition to the capacity to work *and* as an expected outcome of wage labor that was then normalized as an aspect of the wage labor contract. Turning to the fight for protective labor legislation for women, and in particular *Muller v. Oregon,* I showed how resolving this distinction between the disabled

Publication, 1912), 3.
[126] Brandeis and Goldmark, *Women in Industry*, 18.
[127] Dr. Ely Van der Warker and the Report of the Nebraska Bureau of Labor and Industrial Statistics, quoted in Brandeis and Goldmark, 19, 20.
[128] Report of the Nebraska Bureau of Labor and Industrial Statistics, quoted in Brandeis and Goldmark, 20.

and the disabling effects of work was vital to fortifying working class manhood against the threat of the "gender subversion" posed by the wage system.[129]

[129] Glickman, *A Living Wage*, 44.

Chapter 3: Toxic Legacies: Disability Rights in the Wake of the Flint Water Crisis

Introduction: In the Wake

In the first chapter, we saw how disability and the figure of the disabled worker were called upon to bridge the growing divide between the independent citizen-worker envisioned by the free labor ideal and the reality presented by an increasingly urban, industrialized society. Tracking this transformation through to the industrial accident crisis of the early twentieth century, the second chapter examined how the clinical investment in classifying and controlling mental and physical abnormality helped sustain the dignity of work as an animating feature of masculine citizenship even as it concealed its disabling effects. In both cases, the diverse figures that constituted the concept of disability—the blind, the feeble-minded, the epileptic, the injured—functioned to condition and uphold the boundaries of civic membership.

This chapter adopts a slightly different approach, focusing instead on how disability has been taken up in the present as a means of contesting neoliberal austerity measures and the privatization of public goods and services. Turning to the Flint, Michigan water crises, I show how allegations of discrimination on the basis of disability have been employed by residents to both seek redress for the specific harms caused by the crisis *and* to stage a broader critique of the marketizing logic of neoliberalism through which once-public goods like decent public schools and clean water have been recast not just as commodities but as luxuries available only to the white and well-off.

At first glance, this approach appears to fall prey to many of the pitfalls identified by

earlier critiques of identity politics, including: the deployment of a politicized identity (in this case, disability) in an effort to secure legal redress for past injury, a retreat from more radical and radically emancipatory political projects, and a mistaken disregard for the disciplinary and regulatory potential of legal recognition.[1] Nevertheless, I see this deployment of disability rights as related to, but ultimately distinct from, earlier identity-based rights claims. That is, where earlier claimants betrayed a misplaced optimism in their ability to resist recognition's normalizing and disciplinary effects, the Flint case suggests an alternative orientation toward the law, one born out of an acute awareness of the decline and hollowing-out of the welfare state. Neither expressing an investment in their injured status, nor naïve of the regulatory effects of legal recognition, the residents of Flint have politicized theirs and their children's disability status in a self-conscious attempt to secure access to public goods they have otherwise been denied. To be clear: this is not to discount the risks of seeking redress for identity-based harms, but rather to suggest that what we are seeing in Flint does not so neatly map onto the terrain charted by earlier critiques of legalism.

Taking an alternate approach, I view parents' politicization of disability as a strategic response to what Melinda Cooper describes as "a world of ever-diminishing public goods"—one in which "cutbacks to public education, health care, and other social serves…have progressively transferred" what were once state responsibilities "back to the private family."[2] Disability rights, often dismissed as "special rights" that are excessive in their demands, have become, I argue, one

[1] Here I have in mind the critique of legalism articulated most forcefully by Wendy Brown and Janet Halley. See: Wendy Brown, "Suffering the Paradoxes of Rights," in *Left Legalism/Left Critique*, ed. Wendy Brown and Janet Halley (Durham, NC: Duke University Press, 2002), 420–34; Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton, NJ: Princeton University Press, 1995), chaps. 3, 5; Wendy Brown and Janet Halley, eds., *Left Legalism/Left Critique* (Durham, NC: Duke University Press, 2002); Wendy Brown and Janet Halley, "Introduction," in *Left Legalism/Left Critique*, ed. Wendy Brown and Janet Halley (Durham, NC: Duke University Press, 2002), 1–37.

[2] Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism* (Princeton, NJ: Princeton University Press, 2017), 137.

of the few remaining avenues for securing what were once public goods.[3] This suggests not only a profound disturbance of the delicate balance that disability helped maintain between work- and need- based systems of aid, but also (and relatedly) the dissolution of the structures and economic conditions that maintained disability as a relatively discrete category within the welfare state.

Chronologically, the focus of this chapter might best be located in the wake of the social and economic transformations that defined the conditions of the first two chapters; the lead in the water indexing both a bygone era of industrial dominance *and* the more recent triumph of neoliberal governance and market rationality. Flint, the so-called "Vehicle City," bears the residues of the industry to which it owes its name: the miles of lead piping that were laid for a booming town that, in its heyday, was nearly twice it current size; the abandoned and factories that represent both the city's onetime prosperity *and* its more recent decline, and the river that has borne the brunt of nearly two hundred years of industrial waste.[4] Indeed, just as the architects of workmen's compensation normalized accidental injury as a regrettable but necessary aspect of industrial progress, Flint's toxic present is likewise the consequence of a willingness to privilege what was thought to be the vital economic and technical importance of lead against its known health effects.

But there is a second way, too, that we might situate this chapter in relation to those that came before it. Where the first two chapters argued for the importance of disability to late-nineteenth and early-twentieth-century efforts to stabilize and recast the meaning of work as a

[3] Samuel R. Bagenstos, "'Rational Discrimination,' Accommodation and the Politics of (Disability) Civil Rights," *Virginia Law Review* 89, no. 5 (September 2003): 825–923; Mark Kelman and Gillian Lester, "Ideology and Entitlement," in *Left Legalism/Left Critique*, ed. Wendy Brown and Janet Halley (Durham, NC: Duke University Press, 2002), 134–77.
[4] Tim Carmody, "How the Flint River Got so Toxic," The Verge, February 26, 2016, https://www.theverge.com/2016/2/26/11117022/flint-michigan-water-crisis-lead-pollution-history.

defining feature of civic membership, this chapter explores the breakdown of the central assumptions that underlay this relationship. Consider the distinction forged during the industrial accident crisis between compensable work-related disabilities and those injuries and ailments (recall Treiman's colic) that were not only normalized within the employment relationship, but also remade as critical aspects of the dignity of work (and, by association, of the dignity of the working man). Helping to preserve a welfare system in which disability was best dealt with as a matter of charity, this distinction also insured that the category of disability remain stringent enough so as not to challenge the "primary, work-based system" to which it was opposed.[5] What we are witnessing in Flint, I argue, is not just the dissolution of this work-based system, but also the collapse of what Kenneth Karst refers to as the "modern social contract" through which family security was guaranteed in exchange for hard work.[6] The turn to disability as a resource—and the precipitous growth in disability aid recipiency of which this turn might be said to be a part—suggests a radical reorientation of the relationship between work, disability, and civic membership.

I will begin by providing a brief overview of the events leading up to the water crisis before turning to consider what I take to be the two dominant explanations of the crisis and its origins. Where these explanations have tended to view the crisis through the lens of neoliberal policy imperatives, I instead situate it within a longer history that spans the city's industrial heyday to its more recent decline, illuminating the links between the current crisis and a longstanding disregard for worker (and consumer) health in the name of economic growth. Returning to the present, I then turn to what many predict will be a crisis for Flint's already overburdened public education system as the cognitive and developmental effects of prolonged

[5] Gary L. Albrecht, *The Disability Business: Rehabilitation in America* (London: Sage Publications, 1992), 101.
[6] Karst, "Coming Crisis of Work in Constitutional Perspective," 529.

lead exposure become more apparent. Focusing on *D.R. v. Michigan Department of Education*, a class-action lawsuit that alleges violations of federal disability law, I show how parents have mobilized around their children's disabilities (some lead-induced, others not) to lay claim not just to adequate special education services, but also to demand access to the kinds of well-resourced, high-functioning schools that all of Flint's children have been denied under conditions of neoliberal governance and urban austerity. Viewing this mobilization of "special rights" as symptomatic of the hollowing out of the welfare state and the subsequent breakdown of the structures that worked to maintain disability as a discrete administrative category, I conclude by briefly considering what the threatened collapse of this category means for the way we imagine the welfare state.

Situating the Water Crisis: Lead as Industrial Legacy

The details of the Flint water crisis are by this point well known. On April 25th, 2014, the city of Flint, Michigan switched from the Lake Huron-sourced water provided by Detroit Water and Sewage Department (DWSD), to Flint River water. An interim measure while the new Karegnondi pipeline (which would connect Flint to Lake Huron) was completed, the switch to the Flint River—and the $274 million pipeline project—was heralded by Darnell Earley, the city's Emergency Manager, as a cost-saving measure.[7] Water bills had more than doubled between 2009 and 2013, making Flint's water among the most expensive in the country. In a city with a median family income of $26,179 (versus $49,847 statewide) and one of the highest poverty rates in the country (40.1 percent), continued rate increases were unsustainable.[8]

[7] According to Earley, the river provided "a better mechanism to manage…costs." See Dominic Adams, "Flint Water Rate Questions Abound on Eve of Switch Away from Detroit and to River," mlive.com, April 18, 2014, https://www.mlive.com/news/flint/2014/04/questions_abound_on_water_rate.html.
[8] Relative utility costs taken from Anna Clark, *The Poisoned City: Flint's Water and the American Urban Tragedy*

Already, some long-time residents had been forced to move to neighboring municipalities in search of lower utility rates. The Karegnondi pipeline, officials assured residents, would result into lowered utility costs over the long term.

While the water purchased through the DWSD was pretreated, Flint River water was raw. Switching to the River as a primary water source, then, required reactivating the long-dormant Flint Water Treatment Plant. Last operational in the 1960s, and used occasionally as an emergency water source, the plant required significant upgrades to meet current regulatory standards.[9] Nevertheless, the switch to Flint River water was hailed by officials as a triumphant return to the city's "roots" even as they admitted that "there remain[ed] lingering uncertainty about the quality of the water."[10] What many older residents recalled as an "exceptionally polluted river"—contaminated with everything from industrial waste to raw sewage and fertilizer—was, officials promised, a thing of the past. "The Flint River," Flint Utilities Director Daugherty (Duffy) Johnson assured residents, "is a different river than it was the last time it was used—that was pre-Clean Water Act."[11]

And yet, a 2004 assessment conducted by the U.S. Geological Survey warned that the

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(New York: Metropolitan Books, 2018), 34–35. For income and poverty rates, see Leonidas Murembya and Eric Guthrie, "Demographic and Labor Market Profile: City of Flint" (State of Michigan, Department of Technology, Management, and Budget, April 2016), https://milmi.org/Portals/198/publications/Flint_City_Demographic_and_Labor_Mkt_Profile.pdf. For information on the increasing cost of water, see Raftelis Consultants, "Flint Water Rate Analysis" (State of Michigan, Department of Treasury, May 13, 2016), https://www.michigan.gov/documents/snyder/Flint_Rate_Analysis_Final_Raftelis_Report_May_13_2016_524463_7.pdf. The "typical" Flint water bill went from $27.12 in 2009 to 59.27 in 2013—a 118% increase in four years. This increase is attributed to a variety of factors, the two most prominent being a shrinking population and an overall decrease in water consumption.

[9] Ron Fonger, "City Says Flint River Water Will Be Pumped to Homes, Businesses Monday, April 21," MLive, April 17, 2014, https://www.mlive.com/news/flint/2014/04/treatment_plant_starts_test_ru.html.

[10] City of Flint, Michigan, "City of Flint Officially Begins Using Flint River as Temporary Primary Water Source," press release, April 25, 2014. Included in Examining Federal Administration of the Safe Drinking Water Act, Part II, 64. [figure out correct citation format]. According to Mayor Walling, the switch was "a historic moment for the city of Flint to return to its roots and use our own river as our drinking water supply." See Dominic Adams, "Closing the Valve on History: Flint Cuts Water Flow from Detroit after Nearly 50 Years," mlive.com, April 26, 2014, https://www.mlive.com/news/flint/2014/04/closing_the_valve_on_history_f.html.

[11] Adams, "Closing the Valve on History."

river remained "very highly susceptible to potential contamination…given land uses and potential contaminant sources within the source water area."[12] More crucially, upgrades to the treatment plant prior to the switch did not include the equipment necessary to implement government-mandated corrosion control, which, when added to raw water, protects aging lead pipes—still common in many older U.S. cities—from corrosion.[13] Nevertheless, officials were reassured by Michigan Department of Environmental Quality (MDEQ) that corrosion control was unnecessary and that the water was in compliance with safe drinking water standards.[14] Not only did this violate Federal Law, but in a city like Flint, where a combination of depopulation, a declining tax base, and aging infrastructure meant that water spent a longer time in old, usually lead or lead-soldered, service lines, the consequences were dire.[15]

Within weeks of the switch, residents began complaining of changes in the water's taste,

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[12] U.S. Geological Survey, Water Resources Division, Michigan District et. al., *Source Water Assessment Report for the City of Flint Water Supply Flint River Emergency Intake*, (Lansing, MI: U.S. Geological Survey, 2004), 2. Obtained under the Freedom of Information Act from U.S. Information Agency; requested as "DEQ Records" October 2015; received November 2015).

[13] Questions still remain as to why corrosion control, which is fairly inexpensive, was not implemented. See Nancy Kaffer, "Legislative Hearing May Have Revealed Why Flint Didn't Treat Its Water," *Detroit Free Press*, March 31, 2016, https://www.govtech.com/fs/infrastructure/Legislative-Hearing-May-Have-Revealed-Why-Flint-Didnt-Treat-its-Water.html..

[14] Mark Brush, "Who's to Blame for Flint's Water Crisis? Virginia Tech Researcher Points the Finger at MDEQ" (Michigan Radio NPR, October 1, 2015), https://www.michiganradio.org/post/whos-blame-flints-water-crisis-virginia-tech-researcher-points-finger-mdeq.

[15] For national drinking water regulations, see "Applicability of Corrosion Control Treatment Steps to Small, Medium-Size, and Large Water Systems," Title 40 *Code of Federal* Regulations, Pt. 141, Subpart I (2020), https://www.ecfr.gov/cgi-bin/text-idx?SID=f45a5ea649dc81be9268e92ca20d1407&mc=true&node=pt40.25.141&rgn=div5#se40.25.141_181. The long-term use of orthophosphate—the additive most commonly used for corrosion control—creates a protective coating on the inside of pipes that acts as a barrier against the potentially corrosive effects of water. Not only was Flint's water particularly corrosive, but rebuilding the coating can take at least a year. As such, the decision to forgo corrosion control ensured that Flint's water would remain toxic long past the eighteen months it took for officials to acknowledge the crisis and switch back to water sourced from the DWSD. See Carmody, "How the Flint River Got so Toxic." For an excellent analysis of the chemistry behind the lead leeching, see Susan J. Masten, Simon H. Davies, and Shawn P. McElmurry, "Flint Water Crisis: What Happened and Why?," *Journal of the American Water Works Association* 108, no. 12 (December 2016): 22–34; Terese M. Olson et al., "Forensic Estimates of Lead Release from Lead Service Lines during the Water Crisis in Flint, Michigan," *Environmental Science & Technology Letters* 4, no. 9 (2017): 356–361. For an accessible explanation of how orthophosphates work, see "Study Confirms How Lead Got into Flint's Water," *PBS NewsHour* (PBS, August 1, 2017), https://www.pbs.org/newshour/science/study-confirms-lead-got-flints-water.

odor, and appearance.[16] In October 2014, General Motors (GM) announced that its Flint Engine Operations plant would be switching back to water sourced from Lake Huron out of concern that elevated chloride levels in the Flint River water were corroding machinery.[17] Over the next few months, residents would voice repeated concerns about the water's cleanliness and safety, which, in addition to being discolored and often smelly, was causing rashes, hair loss, and stomach aches. Dismissing these concerns, the city issued repeated assurances of the water's safety, explaining differences in taste as a result of the comparative hardness of Flint River water. Speaking to a local reporter in June 2014, Mayor Dwayne Walling went so far as to accuse concerned residents who had opted to forego drinking the water of "wasting their precious money [by] buying bottled water."[18] And yet, between August 2014 and January 2015, the water not only tested positive for *E. coli* and total coliform bacteria, but was also found to be in violation of the Safe Drinking Water Act after twice being cited for elevated total trihalomethane levels (a carcinogenic byproduct of over-chlorination).[19] It would later be discovered that the water was also responsible for an outbreak of Legionnaires' disease, sickening 87 and killing 12.[20]

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[16] For coverage of early complaints, see Ron Fonger, "State Says Flint River Water Meets All Standards but More than Twice the Hardness of Lake Water," mlive.com, May 23, 2014, https://www.mlive.com/news/flint/2014/05/state_says_flint_river_water_m.html.

[17] Ron Fonger, "General Motors Shutting off Flint River Water at Engine Plant over Corrosion Worries," mlive.com, October 14, 2014, https://www.mlive.com/news/flint/2014/10/general_motors_wont_use_flint.html. Ron Fonger, "City's Inaction Is Keeping GM off Flint Water System, Snyder Aide Claims," mlive.com, June 13, 2018, https://www.mlive.com/news/flint/2018/06/aide_says_gov_snyder_sold_gm_o.html.

[18] Ron Fonger, "City Adding More Lime to Flint River Water as Resident Complaints Pour In," MLive, June 12, 2014, https://www.mlive.com/news/flint/2014/06/treated_flint_river_water_meet.html.

[19] Merrit Kennedy, "Lead-Laced Water In Flint: A Step-By-Step Look At The Makings Of A Crisis," NPR.org, April 20, 2016, https://www.npr.org/sections/thetwo-way/2016/04/20/465545378/lead-laced-water-in-flint-a-step-by-step-look-at-the-makings-of-a-crisis.

[20] "Lethal Pneumonia Outbreak Caused By Low Chlorine In Flint Water," *All Things Considered* (National Public Radio, February 5, 2018), https://www.npr.org/sections/health-shots/2018/02/05/582482024/lethal-pneumonia-outbreak-caused-by-low-chlorine-in-flint-water; Sammy Zahran et al., "Assessment of the Legionnaires' Disease Outbreak in Flint, Michigan," *Proceedings of the National Academy of Sciences* 115, no. 8 (February 20, 2018): E1730–39.

Despite ongoing protests, overflowing city council meetings, and community-organized bottled water drives, it would take until October 2015 before residents' concerns would be heeded by officials, and this only once the alarming findings of a local study were released.[21] Led by Mona Hannah-Attisha, a pediatrician at Flint's Hurley Medical Center, the study showed a near doubling in the percentage of Flint's children with elevated blood-lead levels since the switch. Alarmed by the preliminary results of the study, Hanna-Attisha held a press conference in late September 2015 announcing her findings.[22] State officials initially dismissed her results as the product of what they described as "seasonal changes" in the lead content of the water, claiming that they had observed no differences in children's blood lead levels since the switch.[23] Within a week, however, the county health department had declared a public health emergency, and by October 16th the city had switched back to water sourced from Lake Huron.[24] And yet, a quick "solution" to the crisis was elusive. Indeed, officials estimated that the city contained roughly 15,000 unmarked lead service lines, lines whose protective coating had been stripped by the untreated river water. Because of this, Flint's water did not consistently test below the federal action level for lead until 2017. Even now, uncertainty remains over whether the water is safe to

[21] Mitch Smith, "A Water Dilemma in Michigan: Cloudy or Costly?," *The New York Times*, March 24, 2015, sec. U.S., https://www.nytimes.com/2015/03/25/us/a-water-dilemma-in-michigan-cheaper-or-clearer.html.
[22] Ron Fonger, "Elevated Lead Found in More Flint Kids after Water Switch, Study Finds," MLive, September 24, 2015, https://www.mlive.com/news/flint/2015/09/study_shows_twice_as_many_flin.html. For the published version of the study, see Mona Hanna-Attisha et al., "Elevated Blood Lead Levels in Children Associated with the Flint Drinking Water Crisis: A Spatial Analysis of Risk and Public Health Response," *American Journal of Public Health* 106, no. 2 (2016): 283–290.
[23] Ron Fonger, "State Says Data Shows No Link to Flint River, Elevated Lead in Blood," MLive, September 25, 2015, https://www.mlive.com/news/flint/2015/09/state_says_its_data_shows_no_c.html.
[24] Jiquanda Johnson, "Don't Drink Flint's Water, Genesee County Leaders Warn," MLive, October 1, 2015, https://www.mlive.com/news/flint/2015/10/genesee_county_leaders_warn_do.html; Robin Erb and Kathleen Gray, "State to Tackle Unsafe Water in Flint with Tests, Filters," *Detroit Free Press*, October 2, 2015, https://www.freep.com/story/news/local/michigan/2015/10/02/state-officials-outline-plan-flint-water/73200250/. For coverage of the switch back to water sourced from Detroit, see Amanda Emery, "Flint Reconnects to Detroit Water, May Take 3 Weeks to Clear All Pipes," MLive, October 16, 2015, https://www.mlive.com/news/flint/2015/10/flint_reconnecting_to_detroit.html. For national coverage, see Monica Davey, "Flint Officials Are No Longer Saying the Water Is Fine," *The New York Times*, October 7, 2015, sec. U.S., https://www.nytimes.com/2015/10/08/us/reassurances-end-in-flint-after-months-of-concern.html.

drink, with many residents still relying on bottled water.[25]

According to the Centers for Disease Control and Prevention (CDC), "no safe blood lead level has been identified."[26] And while exposure is dangerous at any age, the consequences for children under age six are especially profound and long-lasting, including, "damage to the brain and nervous system; slowed growth and development; learning and behavior problems; and hearing and speech problems."[27] Even blood lead levels that fall below what the CDC currently defines as an "elevated" level (≥5µg/dL) have been found to result in neurobehavioral deficits and decreases in cognitive performance. [28] In the words of Dr. Hanna-Attisha, "If you were going to put something in a population to keep them down for generations to come, it would be lead."[29]

Scholars have offered a number of interpretations of the water crisis and its assumed cause(s). For the purposes of analytic clarity, I will focus on what I take to be the two dominant interpretations. The first, which I refer to as the democratic deficit interpretation, views the water crisis as the consequence of the triumph of a particular kind of neoliberal reason in which ostensibly non-partisan, data- and metrics-driven solutions were allowed to take the place of democratic deliberation. Exemplified by the election of Governor Rick Snyder in 2010, this turn

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[25] Emma Winowiecki, "Does Flint Have Clean Water? Yes, but It's Complicated." (Michigan Radio NPR, August 21, 2019), https://www.michiganradio.org/post/does-flint-have-clean-water-yes-it-s-complicated.
[26] Centers for Disease Control and Prevention, National Biomonitoring Program, *Lead* [factsheet], retrieved from https://www.cdc.gov/biomonitoring/Lead_FactSheet.html.
[27] Perri Zeitz Ruckart et. Al., "The Flint Water Crisis: A Coordinated Public Health Emergency Response and Recovery Initiative," *Journal of Public Health Management and Practice* 25 (2019): S84-90, 86.
[28] Formerly known as a "blood lead level of concern," the CDC recently updated their guidelines, defining elevated blood levels not by a set amount (previously ≥10µg/dL), but rather by the BLL of the "top 2.5% of children when tested for lead in their blood." That level is currently set at 5µg/dL. See Centers for Disease Control and Prevention, *Blood Lead Levels in Children* [factsheet], retrieved from https://www.cdc.gov/nceh/lead/ACCLPP/Lead_Levels_in_Children_Fact_Sheet.pdf. For research on the effects of lead exposure in children, see Bruce P. Lanphear, Kim Dietrich, Peggy Auinger, and Christopher Cox, "Cognitive Deficits Associated with Blood Lead Concentrations <10µg/dL in US Children and Adolescents," *Public Health Reports* 115 (Nov/Dec 2000), 521-529. See also Lisa M. Chiodo, Sandra W. Jacobson, Joseph L. Jacobson, "Neurodevelopmental Effects of Postnatal Lead Exposure at Very Low Levels," *Neurotoxicology and Teratology* 26, no. 3 (May-June 2004), 359-371.
[29] Abby Goodnough, "Flint Weighs Scope of Harm to Children Caused by Lead in Water," *The New York Times*, January 29, 2016, sec. U.S., https://www.nytimes.com/2016/01/30/us/flint-weighs-scope-of-harm-to-children-caused-by-lead-in-water.html.

toward what Jason Stanley calls "a distinctive kind of managerial ideology of faux financial expertise" is viewed by proponents as a welcome reprieve from "admittedly messy" and inefficient democratic processes.[30] Campaigning as a "self-made nerd," who, by his own admission, "love[d] budgets…[and] ignore[d] politics," Snyder promised a "new style of leadership" that would guide Michigan out of the recession.[31] Wresting control away from cash-strapped local municipalities, he appointed Emergency Managers out of the belief that they would be better able than elected leaders to make "fiscally responsible" decisions.[32] Not beholden to "partisan politics," EMs had the "authority to make drastic cuts and rearrangements of public processes and services" in what critics regarded as an "unprecedented interruption of elected city government."[33]

For Stanley, Flint represents only one possible outcome of a much more pervasive problem; namely, the triumph of "technocratic ideals" and the turn away from—if not downright suspicion of—the "messy business of democratic governance."[34] Although Stanley does not use the language of neoliberalism, like Wendy Brown, he sees this turn toward technocracy as a threat to the "institutions, practices, and habits" that are essential to the maintenance and preservation of democracy.[35] However, where Brown is focused on tracing the "diverse

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[30] Jason Stanley, "The Emergency Manager: Strategic Racism, Technocracy, and the Poisoning of Flint's Children," *The Good Society* 25, no. 1 (2016): 4, 7.
[31] Jonathan Oosting, "Comeback Kid? Michigan Gov. Rick Snyder's Super Bowl Ad Prompts Mixed Reviews, Some Confusion," MLive, February 3, 2014, https://www.mlive.com/politics/2014/02/snyder_super_bowl_michigan.html.
[32] Julie Bosman and Monica Davey, "Anger in Michigan Over Appointing Emergency Managers," *The New York Times*, January 22, 2016, sec. U.S., https://www.nytimes.com/2016/01/23/us/anger-in-michigan-over-appointing-emergency-managers.html.
[33] Carolyn G. Loh, "The Everyday Emergency: Planning and Democracy Under Austerity Regimes," *Urban Affairs Review* 52, no. 5 (2016): 832–33.
[34] Stanley, "The Emergency Manager: Strategic Racism, Technocracy, and the Poisoning of Flint's Children," 13.
[35] It is unclear why Stanley does not use the language of neoliberalism in his article (it only appears once, although it is listed as a keyword). Nevertheless, insofar as he views technocratic ideology as endorsing a depoliticizing form of governance, he seems to see it as akin to what, for Brown, is an aspect of neoliberal governance. See Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Brooklyn, NY: Zone Books, 2015), 19.

instantiations" of neoliberalism (as "economic policy, a modality of governance, and an order of reason") and its deleterious effects, Stanley is more interested in how this mode of rationality is deployed in often unequal ways.[36] In other words, if neoliberalism has achieved what Brown refers to as "the economization of everything," its effects are felt much more keenly by those least able to adequately embody the "responsibilized" subject position that it requires.[37]

What Stanley charts, then, is the weaponization of neoliberal modes of governance in the service of what he refers to as "a specific kind of anti-Black racist ideology" that conceals its racism in thinly-veiled demands for financial efficiency and fiscal restraint. Indeed, it was this ostensibly value-neutral approach that was responsible for placing more than half of Michigan's Black residents under emergency management between 2008 and 2013 (the same period saw only 2.4% of white residents under emergency management).[38] As Stanley explains, majority Black cities like Flint, "were taken to be appropriate vehicles for the carrying out of 'ten point plans' that 'c[ould] not be understood' by their inhabitants, applied in a way that bypasses democratic accountability. In so doing, one treats majority Black cities with a neoliberal template that does not recognize human values, but only monetary exchange." Crucially, "these templates…[were] not applied to white majority cities, which by and large…[were] allowed to continue the messy process of self-governance."[39]

For Ashley Nickels, Amanda Clark, and Zach Wood, municipal takeovers are the logical consequence of "dramatic[]" changes in "the form and structure of local government" that have

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[36] Brown, 21, 20.
[37] Brown, 40. For more on responsibilization, see Brown, 133. It is perhaps telling that race appears only a handful of times in *Undoing the Demos,* often alongside gender and class. See also David Fasenfest, "A Neoliberal Response to an Urban Crisis: Emergency Management in Flint, MI," *Critical Sociology* 45, no. 1 (2019): 33–47.
[38] Stanley, "The Emergency Manager: Strategic Racism, Technocracy, and the Poisoning of Flint's Children," 7.
[39] Stanley, 15. As of 2019, 54% of Flint's residents identify as Black. See U.S. Census Bureau, "Population Estimates, July 1, 2019 (V2019)—Flint City, Michigan" QuickFacts, accessed July 30, 2020, https://www.census.gov/quickfacts/flintcitymichigan.

resulted from declining tax revenues in rust-belt cities. Like Stanley, they view takeovers as a strategy or "policy tool" used to "reshape urban governance" and "radically restructure how decisions are made, who has access to decision makers, and, ultimately, who is in power."[40] Avowedly "apolitical" and "expert-led," municipal takeovers are not, however, just about balancing budgets. Rather, they epitomize a neoliberal logic that prizes not just efficiency, but is also well-versed in securing the "privatization…[and] devolution of decision making."[41] While EMs existed prior to Snyder's tenure, Public Act 4 (better known as the "Emergency Manager Law"), passed in March 2011, granted EMs increased authority to "renegotiate or terminate contracts, change collective bargaining agreements, [and] even dissolve local governments."[42] Allowing EMs "almost unfettered control over their respective cities," Snyder "set[] in motion new political forces" through which he hoped to reshape—and even suspend—local governance.[43] Disproportionately affecting already marginalized residents, "the tools provided under most municipal takeover laws," observe Nickels, Clark, and Wood, "emphasize cuts to services and relocation of assets (e.g., privatization) rather than strategic support to address deeper structural issues such as poverty, population loss, and structural racism"[44]

In depicting Flint as a "crisis of neoliberal governance," scholars like David Fasenfest, Carolyn Loh, Stanley, and others are nevertheless careful to emphasize the combined influence of structural racism, depopulation, and industrial decline on the once-prosperous rust-belt city.[45]

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[40] Ashley E. Nickels, Amanda D. Clark, and Zachary D. Wood, "How Municipal Takeovers Reshape Urban Democracy: Comparing the Experiences of Camden, New Jersey and Flint, Michigan," *Urban Affairs Review* 56, no. 3 (2020): 792.
[41] Nickels, Clark, and Wood, 796, 797.
[42] Jonathan Mahler, "Now That the Factories Are Closed, It's Tee Time in Benton Harbor, Mich.," *The New York Times*, December 15, 2011, sec. Magazine, https://www.nytimes.com/2011/12/18/magazine/benton-harbor.html.
[43] "almost unfettered control…" quote is from Mahler. "Set[] in motion new political forces…" is from Nickels, Clark, and Wood, "How Municipal Takeovers Reshape Urban Democracy," 813.
[44] Nickels, Clark, and Wood, "How Municipal Takeovers Reshape Urban Democracy," 795.
[45] Fasenfest, "A Neoliberal Response to an Urban Crisis"; Loh, "The Everyday Emergency." The phrase "crisis of neoliberal governance" is from Graham Cassano and Terressa A. Benz, "Introduction: Flint and the Racialized

Nevertheless, these analyses tend to privilege the proximate decisions and events that precipitated the crisis: the election of Rick Snyder, the passage Public Act 4, the vote to leave the DWSD and switch to Flint River water, the confusion around the addition of anti-corrosive agents, etc. And with good reason—had these choices *not* been made, Flint's water likely would have remained safe. At the same time, Flint is by no means unique, and to treat it as such risks overlooking the

The declension narrative that dominates in accounts of the water crisis paints Flint as at once exceptional (and exceptionally tragic) *and* as only the most dramatic example of what will become an increasingly likely occurrence in older cities more prone to "structural imbalances between revenues…and ongoing commitments to public services and workforces."[46] As aging infrastructure and the toxic legacies of bygone industrial prosperity come into contact with market-oriented logics of governance and what, following Jamie Peck, we might refer to as "austerity urbanism," the likelihood of there being "another Flint" increases. As Peck observes, services and programs that were once state responsibilities have been increasingly privatized, outsourced, or offloaded onto cash-strapped municipalities with "few, if any, opportunities for raising revenues or for reconstructing urban capacities." Occurring in the "context of *already* neoliberalized configurations of (local) state power and (urban) politics," this newest development, Peck argues, has left "state and local governments, and cities in particular…exposed to the full force of austerity's 'extreme economy'."[47]

Indeed, just as the news broke of the crisis in Flint, parents in Newark, New Jersey were

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Geography of Indifference," *Critical Sociology* 45, no. 1 (January 1, 2019): 30.

[46] Jamie Peck, "Austerity Urbanism," *City: Analysis of Urban Change, Theory, Action* 16, no. 6 (December 2012): 628. See also, Jamie Peck, "Pushing Austerity: State Failure, Municipal Bankruptcy and the Crises of Fiscal Federalism in the USA," *Cambridge Journal of Regions, Economy and Society* 7, no. 1 (March 2014): 17–44; Jamie Peck, "Situating Austerity Urbanism," in *Cities Under Austerity: Restructuring the US Metropolis*, ed. Mark Davidson and Kevin Ward (Albany, NY: SUNY Press, 2018).

[47] Peck, "Austerity Urbanism," 651, 626, 628.

notified that tests run in several public schools showed elevated amounts of lead in the water. In a sequence of events that eerily paralleled those in Flint, officials repeatedly declared the water safe to drink before "abruptly chang[ing] course" a year and a half later when a study showed that over half the homes served by one of the city's treatment plants exceeded the federal threshold for action.[48] Reporting on the "hidden scandal" of lead exposure in American schools, Jessica Glenza and Oliver Mailman at the *Guardian* noted that "more than half of public schools in Atlanta were found to have high levels of lead, in some cases fifteen times…the federal limit." Likewise, "schools in Baltimore, Portland, and Chicago were all found to have significant amounts of lead in [their] drinking water."[49] More recently, a federal investigation revealed that the New York City Housing Authority (NYCHA) had "deceived HUD [Housing and Urban Development] inspectors" and "repeatedly made false statements" regarding the safety of the lead paint that remains in nearly thirty percent of its aging housing stock.[50]

In the epilogue of his 2015 book, *Demolition Means Progress: Flint, Michigan, and the Fate of the American Metropolis,* historian Andrew Highsmith reflects on the prospects for Flint in the wake of plant closures, the financial crisis, and seemingly intractable poverty and unemployment. The title, "America is a Thousand Flints" (taken from a line in Buick historian Carl Crow's 1946 *The City of Flint Grows Up*,) evokes both Flint's boomtown past as well as its

[48] An archived version of the website is available here: "News: Newark's Water Is Absolutely Safe to Drink," October 12, 2018, https://web.archive.org/web/20181012162944/https:/www.newarknj.gov/news/newarks-water-is-absolutely-safe-to-drink.
[49] Jessica Glenza and Oliver Milman, "A Hidden Scandal: America's School Students Exposed to Water Tainted by Toxic Lead," *The Guardian*, March 6, 2019, http://www.theguardian.com/environment/ng-interactive/2019/mar/06/america-schools-water-lead-crisis.
[50] Compl. ¶¶1, 8, *USA v. New York City Housing Authority*, 18 Civ. 5213 (S.D.N.Y. June 11, 2018). Sally Goldenberg, "Federal Prosecutors Lay Bare Health and Safety Violations at NYCHA in Scathing Complaint," *Politico New York* (blog), June 11, 2018, https://politi.co/2HTR3Vc; Benjamin Weiser and J. David Goodman, "New York City Housing Authority, Accused of Endangering Residents, Agrees to Oversight," *The New York Times*, June 11, 2018, sec. New York, https://www.nytimes.com/2018/06/11/nyregion/new-york-city-housing-authority-lead-paint.html.

present-day status as an avatar of industrial decline and racialized neglect. Although penned prior to the water crisis, "America is a Thousand Flints" nevertheless captures the sense that Flint, while certainly exceptional, is by no means unique. Tracing an arc from a once-thriving industrial city—Flint once boasted the highest standard of living in the United States—to a diminished, partially abandoned urban wasteland beset by crime, poverty, and financial mismanagement, Flint, like its larger neighbor, Detroit, is often seen as emblematic of the demise of a particular post-war vision of American industrial prosperity. It is, writes Max Holleran, "the worst case scenario of once-proud, unionized, and solidly middle class 'motor cities' that have fallen into ruin."[51]

Lead's Legacies

But the water crisis is as much a story of Flint's prosperous past as it is of its more recent decline, and to view it solely as the result of neoliberal policy priorities run amok risks overlooking the conditions of possibility that enabled a tragedy like Flint to occur. Consider, for example, the industry to which the Vehicle City owes its name. Heavily invested in the production, use, and promotion of lead—present at one point in everything from gasoline and car batteries to lacquers and paints—the automotive industry, and especially General Motors, was, as David Rosner puts it, bluntly, "dependent on lead."[52] Indeed, according to Gerald Markowitz and Rosner, "For the first half of the [twentieth] century, lead was critical to every industry involved in the building of the urban infrastructure, the modern suburb, and the expanded agricultural

[51] Max Holleran, "The Abandonment of Flint," The New Republic, July 19, 2018, https://newrepublic.com/article/150032/abandonment-flint.
[52] David Rosner, "Flint, Michigan: A Century of Environmental Injustice," *American Journal of Public Health* 106, no. 2 (February 2016): 200.

system."[53] Already long-known to be a potent industrial poison, the discovery of tetraethyl lead in 1922 and its addition to gasoline shortly thereafter was justified as an economic necessity (an anti-knock agent, tetraethyl lead, when added to gasoline, increased engine efficiency) this despite well-publicized deaths of five men working at Standard Oil's Bayway labs in Elizabeth, New Jersey. [54] While the poisonings prompted a handful of municipalities to enact short-lived bans on the sale of leaded gasoline, the lead industry successfully convinced regulators and consumers that the dangers of leaded gasoline were purely occupational, and, as with industrial accidents, at once inevitable, economically necessary, *and* attributable to worker carelessness.[55] Speaking at a 1925 conference on the possible health effects of the additive, Frank A. Howard of the Ethyl Gasoline Corporation (a company jointly founded by DuPont and GM to produce and market leaded gas) dismissed the concerns of doctors and public health experts, assuring his audience that the hazard presented by the additive was, at best, "remote." Tetraethyl lead, he concluded, was an "apparent gift of God," and to "abandon the thing…because of our fears" would, he cautioned, "be an unheard-of blunder."[56]

Even in 1925, public health experts warned that tetraethyl lead was "a distinct industrial

[53] Gerald Markowitz and David Rosner, *Deceit and Denial: The Deadly Politics of Industrial Pollution* (Berkeley, CA: University of California Press, 2013), 6.
[54] Within the space of five days, 30 of the 35 remaining workers at the facility would be hospitalized with symptoms of severe lead poisoning, many experiencing paranoid hallucinations and convulsions so intense they needed to be restrained. Markowitz and Rosner, 17–18. Tetraethyl lead was developed by Thomas Midgley, Jr. at GM's Research Laboratory in Dayton, Ohio in 1922. At the time, GM had a "directorate relationship" with the DuPont Company. Together, the companies founded the Ethyl Gasoline Corporation in 1924. For a more detailed account of the relationship between GM, DuPont, Standard Oil (which helped produce the additive), and the Ethyl Gasoline Corporation, see Markowitz and Rosner, chap. 1. Markowitz and Rosner explain the development of tetraethyl lead as the result of GM and DuPont's interest in "develop[ing] a fuel it could patent and profit from." Alcohol and ethanol blends achieved much of the same effects—and were "renewable and nonpolluting"—but could not be patented (17).
[55] According to Markowitz and Rosner, the sale of leaded gasoline was temporarily banned in New York City, Philadelphia, and "various municipalities in New Jersey." See Markowitz and Rosner, *Deceit and Denial*, 21.
[56] Frank A. Howard, "Discussion: Public Health Aspect," in *Proceedings of a Conference to Determine Whether or Not There Is a Public Health Question in the Manufacture, Distribution, or Use of Tetrethyl Lead Gasoline* (Washington, D.C.: Government Printing Office, 1925), 106.

hazard" that, unlike many other industrial poisons, had the potential to affect not just workers, but consumers as well.[57] Expressing her frustration with of industry leaders' callous disregard for the health of workers as well as that of the public, Dr. Alice Hamilton dismissed the idea that "the use…of leaded gasoline c[ould] ever be made safe." "Our best hope," she concluded, "is that some non-poisonous substitute for tetra-ethyl lead be found."[58] Unfortunately, the warnings of Hamilton and her colleagues would go unheeded, this despite increasing evidence that lead, while dangerous at any amount, was especially harmful to children. Indeed, it was not until the introduction of the catalytic converter in 1975 that leaded gasoline would lose its foothold in the market. Even still, the "elimination of lead from gasoline" and the precipitous drop in average blood lead levels in the years that followed—from 12.8µg/dL in 1976 to .82µg/dL in 2015— is considered to be "one of the great environmental achievements of all time."[59]

Many of the themes animating earlier chapters of this dissertation—the disregard for worker health in the name of industrial progress, the persistent belief that occupational exposure was the result of worker carelessness, and the treatment of poor and already marginalized populations as available for disablement—reappear in debates around the development and marketing of lead products. Indeed, if the corroding pipes and the flaking paint still found in

[57] As Markowitz and Rosner recount, William Mansfield Clark, a chemist at the Hygienic Laboratory of the United States Public Health Service, "wrote to A. M. Stimson, assistant surgeon general at the Public Health Service, in October 1922 warning of 'a serious menace to the public health." While Clark highlighted early cases of lead poisoning among workers engaged in the production of tetraethyl lead, he also, according to Markowitz and Rosner, "worried that its use in gasoline would result in atmospheric pollution." See Markowitz and Rosner, *Deceit and Denial*, 18.

[58] Alice Hamilton, "What Price Safety: Tetra-Ethyl Lead Reveals a Flaw in Our Defenses," *Journal of Occupational and Environmental Medicine* 14, no. 2 (1972): 99. The original article was printed in the June 15, 1925 edition of *The Survey*.

[59] Timothy Dignam et al., "Control of Lead Sources in the United States, 1970-2017: Public Health Progress and Current Challenges to Eliminating Lead Exposure," *Journal of Public Health Management and Practice* 25, no. Suppl 1 (February 2019): S13–22. The quote "the great environmental achievements of all time," is attributable to former EPA administrator Carol M. Browner. See "EPA Takes Final Step in Phaseout of Leaded Gasoline," US Environmental Protection Agency, January 29, 1996, https://archive.epa.gov/epa/aboutepa/epa-takes-final-step-phaseout-leaded-gasoline.html.

aging housing units appear to us now as icons of poverty and government neglect, they also speak to the enduring legacy of corporations like GM, National Lead (the parent company of Dutch Boy White-Lead Paint) and DuPont and their nearly century-long campaign against the known toxic effects of lead. Assuring consumers of the benefits of everything from white-lead paint (walls painted with Dutch Boy white-lead, promised one 1927 ad, are "sanitary, cheerful, and bright,") to lead pipes, the lead industry and its trade organization, the Lead Industries Association (LIA), worked to discredit mounting scientific evidence of the devastating effects of lead exposure on children.

The dangers of lead paint, wrote Manfred Bowditch, the director of health and safety for the LIA, in 1957, were exclusive to poorly maintained "slum dwellings," and "until we can find a means to (a) get rid of our slums, and (b) educate the relatively ineducable parent," he concluded, "the problem will continue to plague us."[60] Even in 1965, as the contribution of car exhaust to the alarming increase in atmospheric lead levels was becoming evident, the lead industry still dismissed the dangers of environmental exposure, arguing instead that lead was "naturally" occurring in the environment, and that its ingestion or inhalation was an aspect of a normal, healthy life.[61] Otherwise safe, the environment was "rendered dangerous" argued Robert

[60] The 1927 ad for Dutch Boy white-lead paint can be found in Gerald Markowitz and David Rosner, "'Cater to the Children': The Role of the Lead Industry in a Public Health Tragedy, 1900-1955," *American Journal of Public Health* 90, no. 1 (2000): 40. The quotes on slum dwellings and the ineducability of the urban parent are attributable to Manfred Bowditch, the director of Health and safety of the Lead Industries of America. Quoted in Markowitz and Rosner, 43.

[61] For research on atmospheric lead levels, see Clair C. Patterson, "Contaminated and Natural Lead Environments of Man," *Archives of Environmental Health* 11, no. 3 (September 1965): 344–60; J. H. Ludwig et al., "Survey of Lead in the Atmosphere of Three Urban Communities: A Summary," *American Industrial Hygiene Association Journal* 26, no. 3 (May 1, 1965): 270–84. For a representative response from the lead industry, see Robert A. Kehoe, "Normal Metabolism of Lead," *Archives of Environmental Health* 8, no. 2 (February 1964): 232–35. According to Kehoe (A professor of physiology at the University of Cincinnati who also served as the chief medical officer of the Ethyl Corporation from its inception in 1925 to his retirement in), the body maintained a balance between ingested and excreted amounts of lead. As such, there is "little reason for believing that there is a progressive increase in the lead content of the human body with age under strictly 'normal' environmental conditions" (235). For more on the relationship between Kehoe and Patterson, see Herbert L. Needleman, "Clair Patterson and Robert Kehoe: Two Views of Lead Toxicity," *Environmental Research* 78, no. 2 (August 1, 1998): 79–85.

Kehoe (director of the GM and DuPont-funded Kettering Laboratory of Applied Physiology at the University of Cincinnati) by the "innocence, ignorance, or irresponsibility" of individuals—particularly mothers—whose inattentiveness was responsible for their lead-poisoned children. Framing lead poisoning as both inevitable *and* the fault of carelessness or poor judgment, Kehoe described the "regular exposure to and absorption of lead" as the "common lot of people who live in the environment of a modern technological nation."[62] In the (unintentionally) ominous words of a 1922 National Lead Company advertisement that ran in the *National Geographic*: "You are surrounded by lead, in your home and on your travels. There is lead in the rubber heels of your shoes, in the tires of your automobile, in the bearings of the machinery that makes things for your use or transports you from place to place….Empires fall, but lead pipe lasts."[63]

If the immediate circumstances that led to the water crisis are unique to Flint, the effects of the crisis are not. "It would be a mistake," acknowledges Highsmith, "to conclude that Flint's predicament is simply the result of government mismanagement" (or, relatedly, neoliberal policy priorities).[64] In situating the crisis within this longer history, my intent is not to downplay the culpability of elected leaders, government appointees, or administrators. Rather, it is to insist that we see the water crisis as part of a longer history that links the "toxic conditions of labor and manufacture" that provided the conditions of possibility for Flint's economic rise to prominence to the "new[er] patterns of urban governance" that define the city's present.[65] Lead intoxication, once a condition thought exclusive to particular trades—primarily painting, glasswork, and printing—has become instead a sequelae of industrial decline.

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[62] Robert A. Kehoe, "Under What Circumstances Is Ingestion of Lead Dangerous?" (Symposium on Environmental Lead Contamination, Washington, D.C.: U.S. Government Printing Office, 1965), 51–58.
[63] Advertisement for the National Lead Company, *National Geographic* 42, no. 3 (September 1922): 353
[64] Andrew R. Highsmith, "Flint's Toxic Water Crisis Was 50 Years in the Making," *Los Angeles Times*, January 29, 2016, https://www.latimes.com/opinion/op-ed/la-oe-0131-highsmith-flint-water-crisis-20160131-story.html.
[65] Mel Y. Chen, *Animacies: Biopolitics, Racial Mattering, and Queer Affect* (Duke University Press, 2012), 173–74; Jamie Peck and Heather Whiteside, "Financializing Detroit," *Economic Geography* 92, no. 3 (2016): 237.

Turning, in the following sections, to the aftermath of the crisis, I consider how the citizens of Flint have used the water crisis and its predicted long-term health effects on children to invoke a broader right a high-quality public education. Focusing on *D.R. v. Michigan*, a class action lawsuit brought by parents against the local school districts for violations of federal disability law, I show how disability rights have become critical resources for accessing goods—like decent public schools or clean water—that were once guaranteed by the state.

"An Educational Crisis of Unprecedented Magnitude"

> "In the United States today, some people still have access to good schools, well-paved and plowed roads, sewers that never overflow, public parks with safe swing sets and restrooms, adequately staffed police and fire forces, clean water, and safety nets when their means are limited. Others do not"
>
> - Jessica Trounstine[66]

In the period between 2000 and 2018, enrollment in the Flint, Michigan public school system declined by over 82 percent, from 23,759 students in 2000 to 4,251 students in 2018.[67] Part of a longer-term trend in a district that, at its peak in 1968, boasted 47,867 students, the drop was alarming nevertheless.[68] Partially attributable to a dramatic decline in Flint's overall population during this period—from 193,317 residents in 1970 to 97,161 in 2019—the fate of Flint's public schools can also be explained by the growing popularity of charter schools and as

[66] Jessica Trounstine, "How Racial Segregation and Political Mismanagement Led to Flint's Shocking Water Crisis," *Washington Post*, February 8, 2016, https://www.washingtonpost.com/news/monkey-cage/wp/2016/02/08/heres-the-political-history-that-led-to-flints-shocking-water-crisis/.
[67] Oona Goodin-Smith, "Flint School District Falls to Fourth-Largest in County," MLive, November 29, 2017, https://www.mlive.com/news/flint/2017/11/flint_school_district_falls_to.html. For 2018 enrollment numbers, see Winter Keefer, "See Fall 2019 Count Day Numbers for Genesee County School Districts," MLive, October 7, 2019, https://www.mlive.com/news/g66l-2019/10/36c3a00c064026/see-fall-2019-count-day-numbers-for-genesee-county-school-districts.html. As Keefer notes, Flint declined to provide fall 2019 enrollment numbers.
[68] Dominic Adams, "The Rise and Fall of Flint School District Enrollment over a Century," MLive, October 7, 2015, https://www.mlive.com/news/flint/2015/10/see_ebb_and_flow_of_flint_scho.html.

well as voucher programs and changes in Michigan's public education funding structure.[69] All this, combined with budget shortfalls and significant pension obligations, has left Flint schools under-resourced, underfunded, and understaffed.

The already fragile state of Flint's public school system has only been compounded by the water crisis, in which an estimated 9,000 children under the age of six were exposed to lead-contaminated water over a period of at least 18 months. Citing the profound effects of lead exposure on cognitive ability, school officials are bracing themselves for what they predict will be an increased demand for special education services as the longer-term effects of the water crisis become more evident. Already, there has been a marked rise in the percentage of students enrolled in special education—from 14.2 percent in 2010-2011 to 20.5 percent in 2018-2019 (state-wide enrollments during this period were 13.2 percent and 13.3 percent, respectively.)[70]

Parents and family members, frustrated by the failure of the school system to adequately address the needs of their children, have instead sought redress in the courts. *D.R. v. Michigan Department of Education,* filed on October 18th, 2016 on behalf of Flint families and their

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[69] For current population data, see U.S. Census Bureau, "Geographical Profile: Flint City, Michigan"; generated by Ann Heffernan https://data.census.gov/cedsci/profile?q=Flint%20city,%20Michigan&g=1600000US2629000, March 24, 2020. For historical population data, see Blake Thorne, "See How Flint's Population Has Changed over 150 Years," MLive, May 23, 2014, https://www.mlive.com/news/flint/2014/05/see_how_flints_population_has.html. According to Rebecca David, Kevin Hesla, and Susan Aud Pendergass, charter schools accounted for 55 percent of all enrollments in the 2016-2017 academic year, second only to New Orleans, at 97 percent. See Rebecca David, Kevin Hesla, and Susan Aud Pendergrass, "A Growing Movement: America's Largest Public Charter School Communities" (National Alliance for Public Charter Schools, October 2017). Proposal A, passed in 1994, eliminated the use of property taxes as a source of school funding and instead instituted a statewide education sales tax and a per-pupil funding structure. While the policy has equalized per-pupil expenditures across districts, as Chastity Pratt-Dawsey explains, "slumps in sales taxes due to the recession and unemployment have meant less money for schools. As a result, Michigan now ranks last among the 50 states in total education revenue growth. this has had a profound effect on poorer, underperforming districts like Flint, where 3,853 children—nearly 50 percent of the total school-age population—have enrolled in other districts." See Chastity Pratt-Dawsey, "A Brief History of Proposal A, or How We Got Here," MLive, April 30, 2014, https://www.mlive.com/education/2014/04/a_brief_history_of_proposal_a.html.

[70] Corey Mitchell, "In Flint, Schools Overwhelmed by Special Ed. Needs in Aftermath of Lead Crisis," *Education Week*, August 28, 2019. For statewide data, see Michigan Department of Education, 2018-2019 Special Education Data Portraits: Disability Snapshot; generated by Ann Heffernan using Michigan School Data; https://www.mischooldata.org/SpecialEducationEarlyOn2/DataPortraits/DataPortraitsDisability.aspx (10 October 2019).

school-age children, charges the Michigan Department of Education (MDE), Flint Community Schools (FCS), and the Genesee Intermediate School District (GISD) with "systemic violations of federal law," including the IDEA, Section 504 of the Rehabilitation Act, and Title II of the ADA.[71] Precipitated by the water crisis and the estimated "30,000 school-age children in Flint between the ages of 0 and 19 [who were] exposed to lead-contaminated water" and are either already disabled or at risk of developing a disability, the lawsuit anticipates an increased need for special education services as the health consequences of the water crisis become more apparent.[72]

D.R. v. Michigan is one of many lawsuits related to the water crisis and its aftermath currently wending their way through the court system. Its demands, for the identification and evaluation of children who are at risk of disability, the provision of a free and appropriate public education to students identified as having disabilities, and oversight of disciplinary procedures, are, at first glance, fairly basic.[73] And yet, as unremarkable as the case seems, it shows how identity-based rights—and perhaps especially *disability* rights—have come to function as guarantors of what were once public goods and services. While Flint may emblematize the decline of once-prosperous rust-belt cities and their repurposing as municipal experiments in privatization, its situation is dire but not unique. Indeed, as Jessica Trounstine observes, access to what we tend to think of as basic responsibilities of municipal governance ("good schools, well-paved and plowed roads, sewers that never overflow, public parks with safe swing sets and restrooms, adequately staffed police and fire forces, and clean water") is too often dependent on

[71] The case was brought by the ACLU of Michigan and the Education Law Center and filed in the United States District Court in Flint, Michigan. See, ACLU of Michigan, "ACLU of Michigan and Education Law Center Sue to Protect Schoolchildren from State and Local Violations of Federal Laws," Press Release, October 18, 2016, https://www.aclumich.org/en/press-releases/aclu-michigan-and-education-law-center-sue-protect-schoolchildren-state-and-local.
[72] Compl. ¶100, *D.R. v. Mich. Dep't of Educ.*, Case No. 16-13694 (E.D. Mich. Sep. 29, 2017).
[73] Compl. ¶17, *D.R. v. Mich. Dep't of Educ.*, Case No. 16-13694 (E.D. Mich. Sep. 29, 2017).

one's race, class, and geographic location. These shifts in urban governance and the privatization of what were once collectivized public resources have likewise had a profound effect on those who not only rely on these resources but also lack the means to access them on the private market.[74]

It is within this context of what geographer Jason Hackworth refers to as the "organized deprivation of already deprived spaces," I argue, that disability rights have emerged as an unlikely resource for citizens seeking to contest these transformations.[75] Where earlier critiques of identity-based rights claims alerted us to the tendency of such claims to "reenact even as they redistribute the injuries of marginalization and subordination," what we are seeing with *D.R. vs. Michigan* suggests, I argue, a qualified transformation of this dynamic.[76] Warning of regulative and disciplinary force of rights, Wendy Brown in *States of Injury* famously calls into question the emancipatory potential of their deployment. Insofar as rights claims "issue from contemporary productions of the subject by regulatory norms," these "productions," Brown cautions, "may be entrenched as much as challenged or loosened through political recognition and acquisition of rights."[77] Indeed, the extensive bureaucratic apparatuses that have built up around special education are a prime example of this tendency. Often used to further "exclude, contain, and control" disabled students apart from their non-disabled peers, special education has become a central component of the so-called "school-to-prison pipeline" linking the educational and criminal justice systems.[78] Both overrepresented in special education classrooms and more

[74] For an excellent overview of the influence of conservative legislatures and their success in "accelerat[ing] and caus[ing] [urban] decline by limiting the ability of cities to capture revenue from firms and create a pleasant place to live," see Jason Hackworth, *Manufacturing Decline: How Racism and the Conservative Movement Crush the American Rust Belt* (Columbia University Press, 2019), chap. 4 (quote is from p. 119).
[75] Hackworth, 26.
[76] Brown, *States of Injury*, 70.
[77] Brown, 118.
[78] Nirmala Erevelles, "Crippin' Jim Crow: Disability, Dis-Location, and the School-to-Prison Pipeline," in *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*, ed. Liat Ben-Moshe, Chris Chapman,

likely to be subject to harsh disciplinary action, Black students are especially vulnerable to the regulatory effects of what David Connor and Beth Ferri refer to as "the disability labelling process."[79]

Highlighting the disproportionate placement of Black students in tracking programs and special education classes in the wake of *Brown v. Board of Education*, Connor and Ferri show how disability designations have "unofficially serv[ed] as a tool to resegregate classrooms along racial and ethnic lines."[80] More likely to be categorized as having "softer," less objectively verifiable, "'invisible' disabilities involving the capacity to 'think' or learn and/or those of a social nature, i.e., those pertaining to cognitive/academic development and behavior," minority students are thus tracked into special education programs where they are more likely to be singled out for harsh discipline, including the use of restraints, isolation, and out-of-school suspensions.[81] More recent research has revealed the inconsistencies of disability designations across school settings, finding that black students in schools with a lower percentage of black students overall are more likely to receive a disability designation, suggesting that these designations are influenced by what Dara Shifrer and Rachel Fish describe as "racially biased interpretations of behavior."[82]

Heeding Cooper and Ferri's warnings about the "under-acknowledged and more covert

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and Alison C. Carey (New York: Palgrave Macmillan, 2014), 90.

[79] David J. Connor and Beth A. Ferri, "Integration and Inclusion--A Troubling Nexus: Race, Disability, and Special Education," *The Journal of African American History* 90, no. 1–2 (Winter-Spring 2005): 109.

[80] Connor and Ferri, 108.

[81] According to the Civil Rights Data Collection, more than one in four boys of color and nearly one in five girls of color with disabilities received an out of school suspension in the 2010-2011 school year. Further, "Black students represent 19% of students with disabilities served by IDEA, but 36% of…student who are restrained at school through the use of a mechanical device or equipment designed to restrict their freedom of movement." See "Civil Rights Data Collection Data Snapshot: School Discipline" (Washington, D.C.: U.S. Department of Education Office for Civil Rights, March 2014), 1, https://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf.

[82] Dara Shifrer and Rachel Fish, "A Multilevel Investigation into Contextual Reliability in the Designation of Cognitive Health Conditions among U.S. Children," *Society and Mental Health* 10, no. 2 (2020): 191. See also Rachel Fish, "The Racialized Construction of Exceptionality: Experimental Evidence of Race/Ethnicity Effects on Teachers' Interventions," *Social Science Research* 62 (February 2017): 317–34.

forms of racial segregation" permitted "under the guise of 'disability'," I suggest that what we are seeing in *D.R. v. Michigan* represents a transformation in the use of identity-based rights claims. Claiming the rights owed to them as disabled students, plaintiffs have thus mobilized disability rights in the service of a broader critique of state disinvestment and the commodification of public goods and services. What is more, rather than seeking individual-level compensation for their children's injuries, they have located their demands within the context of Flint's longer economic decline, citing the "deterioration of essential infrastructure and public services, including education and public health services." Indeed:

> Even before the lead crisis, the Flint public education system was failing its students and the community. Student enrollment in Flint Community Schools has declined rapidly, graduation rates are low, and drop-out rates high. The district, facing a crippling deficit, has drastically reduced staff, programs, and services in recent years, leaving school children in under-resourced, overcrowded classrooms.[83]

Lead counsel Greg Little readily admitted that many of the issues addressed by the lawsuit, including lack of access to neuropsychological testing and special education services, long pre-dated the water crisis: "The lead in the water took an already difficult, bad situation and made it significantly worse."[84] In other words, while the complaint alleges violation of the IDEA, Title II of the Rehabilitation Act, and the ADA, its remedies—early screening and intervention services, the identification and evaluation of children who are either already disabled or at risk of developing a disability, the provision of IDEA-compliant special education services, and a review of disciplinary procedures—are at the same time a means for securing access to the kind of "well-resourced, high-functioning schools" to which all children are

[83] Compl. ¶2, *D.R. v. Mich. Dep't of Educ.*, Case No. 16-13694 (E.D. Mich. Sep. 29, 2017).
[84] Little, quoted in Tracy Samilton, "State to Pay $4 Million to Screen Kids in Flint for Learning Problems" (Michigan Radio NPR, April 9, 2018), https://www.michiganradio.org/post/state-pay-4-million-screen-kids-flint-learning-problems.

entitled, not just those that qualify for accommodations.[85] Citing "systemic failures" to "meet the special education needs of its students," plaintiffs are demanding "global relief that will benefit every FCS student with special education needs."

The issues confronting Flint's public schools—budget shortfalls, staffing shortages, enrollment declines, among others—are symptomatic of "the privatization of public goods and services" that is a hallmark of neoliberalism.[86] Of course, as Loïc Wacquant observes, privatization "is not a novel development in the United States," having long figured as a component of domestic policy. Nevertheless, privatization—its targets as well as its motivating ideology—has taken on a decidedly more aggressive tone in recent years. Remarking on the overwhelming influence of neoliberal ideology on educational reform, Kenneth Saltman notes that although "corporate reforms" to education have largely failed to improve test scores or cut costs (which would seem to be their purpose), they have "succeeded in reframing public discourse about education: transforming public schooling into an individualized responsibility while upwardly redistributing educational resources…[and] gutting public schooling for the poor."[87]

Consider the following exchange between then Secretary of Education nominee Betsey DeVos and Senators Maggie Hassan and Tim Kaine at DeVos's confirmation hearing: Asked by Kaine whether "all K-12 schools that receive governmental funding [should] be required to meet the requirements of the Individuals with Disabilities Education Act (IDEA)," Secretary of Education nominee Betsy DeVos replied, "That is a matter that's best left to the States."[88]

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[85] Compl. ¶6, *D.R. v. Mich. Dep't of Educ.*, Case No. 16-13694 (E.D. Mich. Sep. 29, 2017).
[86] Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham, NC: Duke University Press, 2009), 105.
[87] Kenneth J. Saltman, "Neoliberalism and Corporate School Reform: 'Failure' and 'Creative Destruction,'" *Review of Education, Pedagogy, and Cultural Studies* 36, no. 4 (2014): 252.
[88] This question was asked by Senator Tim Kaine (D-VA), *Nomination of Betsy DeVos to Serve as Secretary of Education: Hearing of the Committee on Health, Education, Labor, and Pensions*, 115th Cong. 206 (January 17,

Seemingly unaware that the IDEA is a federal law, DeVos admitted upon further questioning by Senator Maggie Hassan (D-NH) that she "may have confused it" (although with what she didn't say). Alarmed by DeVos's unfamiliarity with the law, Senator Hassan (whose son, Ben, has cerebral palsy), expressed further concern that DeVos's support for voucher programs would disadvantage disabled children, running the risk of "turning our public schools into warehouses for the most challenging kids with disabilities."[89] When Devos replied that she would "be sensitive to the needs of special needs students," Hassan interjected: "With all due respect, it's not about sensitivity, although that helps. It's about being willing to enforce the law to make sure that my child and every child has the same access to…high-quality public education."[90]

Regarded as "the most significant legislation for students with disabilities," the IDEA, passed in 1975, guarantees the right of children with disabilities to a "free appropriate public education (FAPE)…designed to meet their unique needs."[91] Serving over 7.1 million students between the ages of 3 and 21 (14 percent of all public school students), the Act authorizes federal funding for special education and related services. Accounting for over twenty-two percent of the Department of Education's annual budget, DeVos's seeming ignorance of the law and its implementation is indeed surprising.[92] Although less celebrated than the Americans with Disabilities Act, the IDEA, together with Section 504 of the Rehabilitation Act of 1973 (which prohibits programs that receive federal funding from discriminating against people with disabilities), was in some respects more decisive in the fight to secure inclusion and equality on

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2017), 53.

[89] Hassan noted that there were several voucher programs in Florida and Ohio that required students to sign away their rights under the IDEA. See *Nomination of Betsy DeVos*, 62.

[90] *Nomination of Betsy DeVos*, 62.

[91] 20 U.S. Code §1400(d). For the definition of what constitutes a free appropriate public education, see 20 U.S. Code §1401(9).

[92] Bill Hussar et. al., *The Condition of Education 2020* (NCES 2020-144), U.S. Department of Education (Washington DC: National Council for Education Statistics), retrieved July 18, 2020 from https://nces.ed.gov/pubs2020/2020144.pdf.

behalf of disabled people—not only providing a model for later laws, but also instilling in beneficiaries a refusal to accept the status quo.[93] It was through the IDEA and Section 504 that disabled people became, as Anita Silvers puts it, "a visible presence in the public sphere."[94]

In a confirmation hearing notable for its partisan rancor, DeVos's responses to Senators Kane and Hassan nevertheless stand out. And though it may be tempting to dismiss DeVos for her blithe ignorance of one of the central functions of the department she was being nominated to run, her exchange with Senator Hassan captures both the necessity and fragility of rights as guarantors of equality for disabled people. DeVos's comment that she would be "very sensitive to the needs of special needs students," and Hassan's reply that it was not a matter of sensitivity but of law, is illustrative of the tendency for disability rights to be treated as "special" rights—not just exceptional, but granted out of sympathy for those with "special needs."

Stemming from the assumption that disability is best dealt with as a matter of charity rather than right—and the related belief that the accommodations necessary to secure disabled equality are, in any case, unduly demanding—the tendency to treat disability rights as "special rights" is pervasive.[95] Indeed, as legal scholar Samuel Bagenstos observes, the fulfillment of what he refers to as "disability-specific" social rights through programs like Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) is often used (whether intentionally or not) to limit, rather than expand, access to full social citizenship for people with disabilities.[96] He explains further:

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[93] For an overview of the impact of Section 504 and IDEA on the evolution of disability rights activism in the 1970s and 1980s, see *Doris Zames Fleischer and Frieda Zames, The Disability Rights Movement: From Charity to Confrontation* (Philadelphia, PA: Temple University Press, 2011), chaps. 4, 11.
[94] Anita Silvers, "Formal Justice," in *Disability, Difference, Discrimination: Perspectives on Justice in Bioethics and Public Policy*, ed. Anita Silvers, David Wasserman, and Mary B. Mahowald (New York: Rowman & Littlefield, 1998), 14.
[95] On the long history of the relationship disability and charity in the American context, see Longmore, *Telethons*.
[96] Samuel R. Bagenstos, "Disability, Universalism, Social Rights, and Citizenship Symposium: Personhood and Civic Engagement by People with Disabilities: A Conference to Explore the Legal Underpinnings of Personhood

> [P]eople who accept or use social welfare rights are often treated, by society at large, as less entitled to participate fully in the life of the community than those who do not accept these rights….Those who have advocated expansion of social rights have therefore been forced to fight a battle on two fronts—to seek that expansion while at the same time working to ensure that it does not undermine the equal citizenship status of those who receive expanded benefits.[97]

Illustrating the fragility and insufficiency of rights as guarantors of "treatment by society—and not just by particular legal institutions—as a fully equal member of the community," Bagenstos alerts us both to the necessity of disability-specific social rights and to their limits. At a political moment in which even once-untouchable benefits programs like SSI and SSDI are viewed with suspicion, the idea that recipients of cash aid are treated as less than full citizens is unsurprising.[98] As Bagenstos observes, the extension and recognition of disability rights remains parasitic upon long-held beliefs about "people with disabilities as the proper recipients of charity—as the paradigm of the deserving poor."[99] In other words, disability at once authorizes relief *and* demands that recipients behave in a way befitting their status as "deserving" objects of charity. Of course, Bagenstos is not suggesting that we must do away with rights. Indeed:

> To participate fully in community life—including, notably, the workforce—many people with disabilities need to rely on government interventions. Those interventions include health care provision, personal assistance services, accessible technology and transportation, and workplace nondiscrimination and accommodation requirements. But those very government interventions can readily be understood by the public as 'special rights,' which are highly vulnerable in the political process, are narrowly and grudgingly administered, and ultimately undermine the goal of achieving full social citizenship for people with disabilities.[100]

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and the Barriers to Participation by Persons with Disabilities in Civic and Social Life," *Cardozo Law Review* 39, no. 2 (2017): 413–38.

[97] Bagenstos, 418–19.

[98] Writing in 1984, Stone referred to disability benefits as a "classic motherhood issue," although already there were signs that disability benefits, too, would be subject to increased scrutiny and potential cuts. See Stone, *The Disabled State*, 12.

[99] Bagenstos, "Disability, Universalism, Social Rights, and Citizenship Symposium," 433.

[100] Bagenstos, 432.

Given these two claims—first, that receipt of what are perceived to be "special" disability-specific rights relegates recipients to a kind of second class citizenship; and second, that such rights are nevertheless necessary for "achieving full social citizenship"—we appear to be at an impasse. However, rather than object that disability-specific rights are not special or excessively demanding—that, for example, the cost of satisfying accommodation requirements is minimal or that accommodations, once made, will pay for themselves—I suggest we take a different approach. What would it mean, I ask instead, to see the turn to "special rights" as indicative of the breakdown of the structures necessary to maintain the illusion of disability as a bounded category that "is medically demonstrable by objective tests"?[101]

What we are seeing in Flint, and what the anxiety around the proliferation of special rights indexes, I argue, is not just the threatened expansion of disability programs (and related concerns about the costs they might incur), but rather the potential dissolution of a welfare system that depended for its coherence on the assumption that disability could be meaningfully distinguished from the "gradual breaking down and wearing out" consequent to everyday life.[102] This is related to, but distinct from the claim made by some disability studies scholars and activists that we are all potentially disabled or, as some have put it, "temporarily able-bodied" (TAB). Intended to call into question the boundaries that render disability as ability's "unimaginable," other, this universalization of the category of disability is meant to invite a

[101] Indeed, this was the approach taken by many supporters of the Americans with Disabilities Act, partly in an effort to appease businesses who were wary of the expense of making accommodations. As Jennifer Erkulwater points out, this approach found purchase in the fiscal conservatism that took hold in the late 1970s and 1980s, with the ADA framed less as a civil rights law than as good business. Indeed, Erkulwater describes the ADA as a "pyrrhic victory," noting that "in order to secure support for the law from conservatives, disability rights activists largely jettisoned the call for a comprehensive social safety net that could facilitate community integration for people who would otherwise become institutionalized." In so doing, they aligned themselves with "the 'small government' zeitgeist of the Reagan years." See Jennifer L. Erkulwater, *Disability Rights and the American Social Safety Net* (Ithaca, NY: Cornell University Press, 2006), 167–68.
[102] Wickersham, "'Is Injured' 'Whenever an Accident Occurs,'" 153.

heightened sense of awareness of and obligation to the disabled Other (who is also, potentially, one's self). Notwithstanding the value of acknowledging vulnerability and dependency as aspects of the human condition, I do not share the optimism of advocates of this view that such an acknowledgment will necessarily result in collective action. Rather, what I mean to highlight here is the threatened collapse of disability as both an administrative category within the welfare state *and* as an organizing force in our understanding of the relationship between work, disability, and civic membership.

Conclusion

When viewed against the other class-action lawsuits currently wending their way through the Michigan state courts—not least the $600 million settlement reached on August 19th—the demands of *D.R. v. Michigan* seem almost insignificant.[103] And yet, the simplicity of the plaintiffs' demands—for well-resourced, high-functioning schools—and their articulation of these demands in the language of disability rights, remains striking. This mobilization of disability as a means of accessing once public goods, I have argued, betokens a more dramatic shift in the meaning of disability and its role in negotiating the obligations and entitlements of citizenship. What we are witnessing—both in Flint and elsewhere—is the collapse of the structures and institutions that preserved disability as a relatively discrete category that could mediate between the disabling effects of work and its continued significance to notions of political belonging.

[103] Julie Bosman, "Michigan to Pay $600 Million to Victims of Flint Water Crisis," *The New York Times*, August 19, 2020, sec. U.S., https://www.nytimes.com/2020/08/19/us/flint-water-crisis-settlement.html.

Conclusion

On February 12, 2014, Obama signed Executive Order 13658, raising the minimum wage from $7.25 to $10.10 per hour for federal contractors and subcontractors.[1] Announced in the midst of protracted debates in the Senate over the Minimum Wage Fairness Act, which would gradually increase the federal minimum wage to the same level, Obama's order was dismissed by his opponents as a token gesture that would have limited substantive effect.[2] Indeed, applying only to new contracts, the Order would raise the wages of roughly 300,000 workers—a trivial amount in comparison with the 28 million workers estimated to be affected by the Minimum Wage Fairness Act.[3] Only briefly mentioned in the coverage that followed was the fact that the Order would also apply to "workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C 214(c)."[4]

Dating back to the Fair Labor Standards Act (FLSA) of 1938, Section 14(c) was initially

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[1] Exec. Order No. 13658, 79 Fed. Reg. 9849 (Feb. 12, 2014). See https://www.federalregister.gov/documents/2014/02/20/2014-03805/establishing-a-minimum-wage-for-contractors. The Law was scheduled to take effect on January 1, 2015. The current federal contractor rate is $10.60; see https://www.dol.gov/whd/flsa/eo13658/.

[2] Clare Kim, "Boehner: Minimum Wage Raise Affects 'No One,'" MSNBC, January 28, 2014, http://www.msnbc.com/the-last-word/boehner-bashes-wage-hike; "Obama to Sign Order Raising Minimum Wage for Federal Contractors," NBC News, February 12, 2014, https://www.nbcnews.com/news/us-news/obama-sign-order-raising-minimum-wage-federal-contractors-n28021.

[3] Data on the number of workers covered by the Order are difficult to obtain. The Congressional Budget Office (CBO), writing in response to Rhode Island Senator Chris Van Holland, admitted that they "were unaware of any comprehensive information about the size of the federal government's contracted workforce." See Douglas W. Elmendorf to Chris Van Hollen, March 11, 2015, accessed August 22, 2019, https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49931-FederalContracts.pdf. The 300,000 amount (out of over 2 million federal workers) is mentioned in "Obama to Sign Order Raising Minimum Wage for Federal Contractors." For estimates of the number of workers affected by the Minimum Wage Fairness Act, see Ramsey Cox, "GOP Blocks Minimum-Wage Hike," Text, *The Hill* (blog), April 30, 2014, https://thehill.com/blogs/floor-action/senate/204802-gop-blocks-1010-minimum-wage.

[4] Exec. Order No. 13658, 79 Fed. Reg. 9849 (Feb. 12, 2014).

part of a broader effort to encourage the employment of students, learners, and disabled workers by permitting employers to pay them less than the minimum wage. However, whereas the provision governing students has been amended to apply only to the first 90 days of employment, setting both an age limit (20 years old) and a wage floor ($4.25 per hour), no such regulations apply to disabled workers.[5] Instead, disabled workers are to be paid what is known as a "commensurate wage," a subminimum wage that is, per United States Code, "related to the individual's productivity" and "commensurate with th[at] paid to non handicapped workers employed in the vicinity…for essentially the same type, quality, and quantity of work."[6]

And yet, however tempting it might be to treat Section 14(c), as many critics do, as "a relic in policy left over from the 1930s,"[7] and "an antiquated exception to U.S. labor law,"[8] its endurance speaks not to its exceptionality, but rather to its affinity with the diminished material conditions of wage work in the postindustrial economy. Indeed, it is in this moment of heightened awareness of the injustices of the subminimum wage program and calls for its abolition that the similarities between sheltered and low-wage competitive employment are rendered most apparent. At Seattle's Sea-Tac airport, for example, custodial services have been outsourced to PRIDE Industries, a Roseville, California-based service contractor that employs 3,229 workers with disabilities, of which 1,103 are paid legally-sanctioned subminimum wages.[9]

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[5] 29 U.S. Code §214(b). For current minimum wages, see 29 U.S.C §206.

[6] 29 U.S.C §214(c). Not only does this formula assume that there is a meaningful competitive analogue to the labor performed in the workshops, but productivity assessments are usually completed soon after a worker is assigned to the task, suggesting that their productivity will increase as they gain more experience. And while workplaces are required to reassess productivity every six months, this rule is rarely enforced. For more on these calculations, see U.S. Library of Congress, Congressional Research Service, *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act*, by William G. Whittaker, RL30674 (2005): 20.

[7] National Disability Employment Policy, "From the New Deal to the Real Deal: Joining the Industries of the Future," *National Council on Disability* (October 2018), 16.

[8] Alexander Wohl, "Poverty, Employment, and Disability: The Next Great Civil Rights Battle," *Human Rights* 40, no. 3 (August 2014): 21.

[9] The PRIDE website boasts that the company is the largest employer of disabled workers in California, but nowhere mentions the payment of subminimum wages. The only way to know if a company is utilizing sub-minimum wage labor is to check the list of certificate holders provided by the US Department of Labor against employee totals

In June 2018, an agreement between then-California governor Jerry Brown and the Service Employees International Union (SEIU) Local 1000 allowed 120 disabled PRIDE employees to retain their custodial positions at a Stockton, California prison after the union alleged that the PRIDE contract violated protections against outsourcing.[10] While these positions would typically be staffed by prison inmates, the dispute concerned the California Health Care Facility, a state-run inpatient hospital for the incarcerated. In other words, the California Department of Corrections, unable to employ in-house underpaid labor, had exchanged one exploited population for another in an effort to cut costs.

What are we to make of these examples? On the one hand, they offer a vivid illustration of what Kathi Weeks describes as the "irrationality of our commitment to work" and the degree to which this commitment has limited our imagination of possible alternatives, not least for sheltered workshop employees.[11] Indeed, many supporters of sheltered and subminimum-wage labor— particularly parents—support these practices out of a concern that there are no meaningful alternatives. If disabled workers are paid cents on the dollar, at the very least it is something to do. Whatever alternatives we devise to sheltered and subminimum-wage labor cannot therefore stop at workplace integration and higher wages, but must also imagine alternative futures in which work is *not* the organizing feature of daily life—what, following Weeks, we might refer to as "postwork imaginaries."[12]

But I conclude with a discussion of sheltered and subminimum-wage labor for a slightly different reason, which is the tendency to dismiss these practices as antiquated relics of a less-

provided by the company. See: https://www.dol.gov/whd/specialemployment/CRPlist.htm.
[10] Adam Ashton, "Disabled Workers Fear Losing Their Jobs at California Prison," *The Sacramento Bee*, May 23, 2018, https://www.sacbee.com/news/politics-government/the-state-worker/article211705224.html; Adam Ashton, "Disabled Contractors Can Keep California Prison Jobs despite SEIU Complaint," *The Sacramento Bee*, June 13, 2018, https://www.sacbee.com/news/politics-government/the-state-worker/article213059444.html.
[11] Weeks, *The Problem with Work*, 43.
[12] Weeks, *The Problem with Work*.

enlightened time—initially well intentioned, but now embarrassingly outdated. Like the outraged reactions to Trump's mocking of Serge Kovaleski, this response betrays a false sense of moral superiority: That was then, this is (the more enlightened) now. And yet, as I attempted to convey in the introduction, at issue in both cases is not simply the disingenuousness of our moral beliefs, but a misrecognition of the centrality of disability to the very terms of political inclusion. The debate about sheltered labor and subminimum wages is not "just" about fair compensation, nor is it "just" about the importance of work to our sense of self.

As a means of financial support and a source of public respect, work is, as political theorist Judith Shklar writes, one of the primary "attributes of an American citizen."[13] I understand this statement to mean two things. The first, emphasized by Shklar, is the significance of paid employment to public standing and the ability to command respect from one's peers. Second, and relatedly, is the obligation to work as a condition of full citizenship. To be an American citizen, you *must* work. To not work (whether one does so willingly or not) is often a source of shame, social disapprobation, and moral condemnation.

To the extent that American citizenship is often defined in relation to labor and laboring capacity, this dissertation has attempted to recover the place of disability within this dynamic. Rather than understanding the relationship between disability and work to be primarily oppositional, I have offered an alternative interpretation of this dynamic, recovering the underappreciated significance of disability for mediating transformations in the meaning of work and its relationship to political belonging.

I want to conclude, then, with a note on the title, which was taken from Anita Silvers's "Formal Justice," published in 1998 as part of a collected volume she co-edited with David

[13] Shklar, *American Citizenship*, 3.

Wasserman and Mary Mahowald.[14] Silvers, an analytically trained professor of philosophy at San Francisco State University until her death in 2019, intended for the phrase to capture the dilemma posed by disability to the ideal of democratic equality. "If equality should be conferred upon people with disabilities," asks Silvers, "in what does their equality consist?"[15] What, further, are our obligations to ensure that this equality—however we go about measuring it—is met? While this dissertation is, in many respects, indebted to Silvers's work—not least her unerring ability to get to the heart of what makes disability so confounding for our central philosophical categories, in pointing to disability as a democratic dilemma, I mean the phrase slightly differently. Rather, the phrase is meant to capture not just the problems presented by disability to our central categories of analysis, but also the many and often contradictory ways that disability operates not only as a site of exclusion, opposition, or fascination but as constitutive of the very terms of political inclusion.

[14] Silvers, "Formal Justice."
[15] Silvers, 14.

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