

Mental Disability and the Right to Vote

by

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DEDICATION

For my Family

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ABSTRACT

Nearly forty states disfranchise people based on their mental status. Despite the patchwork of laws limiting the voting rights of people with mental disabilities, one of America's largest minority groups, few researchers have investigated the constitutional strategy utilized for disenfranchisement or the subsequent legal challenges that arose. Through a fine-grained analysis of constitutional and legislative debates, court cases, trade documents, newspapers, and petitions, from the beginning of these suffrage restrictions to the enactment of the 19th Amendment, I describe a "common sense" disability model – the methodology behind barring people with alleged mental disabilities from the franchise. I consider how and why state legislators prohibited individuals' right to vote based on mental capacity in state statutes and constitutions. I show that two groups – African Americans, and women – were labeled as unfit for suffrage and full political citizenship because of their assumed mental deficiencies, and how each of these groups deployed their own definitions of mental capacity as they fought for the franchise. I then examine the subsequent court and congressional challenges involving people alleged to have voted despite their being judged to lack the necessary mental capacity. I conclude by reflecting on the changed landscape of the twentieth century, as statutory provisions such as the American with Disabilities Act

and the Voting Rights Act, and political movements such as the disability rights movement challenged the exclusion of the disempowered from the franchise.

INTRODUCTION

“When hereditary wealth, the privileges of rank, and the prerogatives of birth have ceased to be, and when every man derives his strength from himself alone, it becomes evident that the chief cause of disparity between the fortunes of men is the mind. Whatever tends to invigorate, to extend, or to adorn the mind, instantly rises to a high value.” Alexis de Tocqueville, *Democracy in America*, Volume 2, 1840¹

“I just think if you are declared insane you should not be allowed to vote, period...Is insanity a disability? I have an answer to that: no. You're insane; you're nuts.” Joseph DeLorenzo, Chairman of the Cranston, New Jersey Board of Canvassers, June 19, 2007²

On October 14, 2007, a *New York Times* reader would come across a curious article. It begins: “All jokes aside about what portion of the state’s population could be ineligible to vote, the New Jersey Constitution does actually bar idiots from voting.” According to the New Jersey Constitution, “no idiot or insane person shall enjoy the right of suffrage.” Although this traditional language might shock modern ears accustomed to more respectful labels for people with cognitive or psychiatric disabilities, New Jersey is far from alone in relying on such archaic terminology and ideas when describing people with mental disabilities. Currently, nearly forty states disenfranchise people based on their mental status, with a minority of states retaining

¹ Alexis De Tocqueville, *Democracy in America: Volume 2*. (Henry Reeves trans., Cambridge, Sever & Francis 3d ed. 1863)(1840): 45.

² Jeremy W. Peters, “Who Is Fit to Vote? A Vote Will Decide,” *New York Times* (October 14, 2007).

the archaic language of idiocy and lunacy.¹

Despite these widespread provisions against suffrage that in part define the members of one of the United States' largest minority groups, very little academic work has been done on how and why these restrictions were implemented and enforced.²

¹ Ibid. A brief note about terminology. I will be using terms that I hope will be offensive to everyone. My purpose is to utilize the terms that are accurate to the time period that I am examining. Lunacy or insanity roughly corresponds to what we would refer to as psychiatric or mental impairments today, such as schizophrenia. Idiocy or feeble-mindedness refers to intellectual or developmental impairments such as Down's syndrome. Moreover, while the disability studies movement emphasizes a "people first" system of description, following my historical actors, I will use the overly broad descriptors, "lunatic" and "idiot." The actual number of states is a moving target, subject to litigation and referendum. The Bazelon Center for Mental Health Law maintains a regularly updated spreadsheet of voting prohibitions. As of this writing, 43 states prohibit people from voting based on their mental status. Bazelon Center for Mental Health Law, "State Laws Affecting the Voting Rights of People with Mental Disabilities," available at <http://www.bazelon.org/LinkClick.aspx?fileticket=1kgFTxMFHZE%3D&tabid=315> (last accessed July 3, 2015). Also, as will be shown, some people have been challenged in the absence of constitutional or statutory language prohibiting their vote.

² An increasing number of articles note contemporary difficulties for people with mental disabilities who wish to vote. See, e.g., Marcus Redley, Julian C. Hughes and Anthony Holland, "Voting and Mental Capacity," *British Medical Journal* 341 (2010); Nicholas F. Brescia, "Modernizing State Voting Laws That Disenfranchise the Mentally Disabled with the Aid of Past Suffrage Movements," *54 St. Louis University Law Journal* 943-966 (2010); Raymond Raad, Jason Karlawish, and Paul S. Appelbaum, "The Capacity to Vote of Persons with Serious Mental Illness," *Psychiatric Services* 60 (2009); H. Keeley, Redley M. and ICH Clare, "Participation in the 2005 General Election by Adults With Intellectual Disabilities," *53 Journal of Intellectual Disability Research* (2008):175-81; Sally Balch Hurme and Paul S. Appelbaum, "Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters," *McGeorge Law Review* 38 (2007); Kay Schriener, "The Competence Line in American Suffrage Law: A Political Analysis," *Disability Studies Quarterly* 22, no. 2 (2002): 61-72; A. Blais, L. Massicotte, and A. Yoshinaka, "Deciding Who Has The Right To Vote: A Comparative Analysis Of Election Laws," *20 Electoral Studies* (2001):41-62; Kay Schriener and Lisa Ochs, "No Right Is More Precious": Voting Rights and People With Intellectual And Developmental Disabilities," (Research and Training Center on Community Living, Institute on Community Integration, Policy Research Brief) 11, no. 1 (2000), Available at <http://ici.umn.edu/products/prb/111/default.html>; Paul S. Appelbaum, "'I Vote. I Count': Mental Disability and the Right to Vote," *51 Psychiatric Services* 849 (2000); Note, "Mental Disability and the Right to Vote," *88 Yale Law Journal* 1644 n.18 (1979). In particular, scholars highlight voting problems for the elderly, regardless of whether they are labeled as mentally disabled. See, e.g., Antoine Bosquet, Amar Medjkane, Dorit Voitel-Warneke, Philippe Vinceneux, and Isabelle Mahé, "The Vote of Acute Medical Inpatients: A Prospective Study," *Journal of Aging and Health* 21, no. 5 (2009): 699-712; Sean Flynn, "One Person, One Vote, One Application: District Court Decision in *Ray v. Texas* Upholds Texas Absentee Voting Law That Disenfranchises Elderly and Disabled Voters," *11 Scholar* 469 (2008-2009); Jason Karlawish and Richard J. Bonnie, "Voting by Elderly Persons with Cognitive Impairment: Lessons from Other Democratic Nations," *38 McGeorge Law Review* 879-892 (2007); Mary Schrauben, "Ensuring the Fundamental Right to Vote for Elderly Citizens in the United States," *9 T.M. Cooley Journal of Practical &*

This dissertation analyzes how the categories of mental “deficiency” and disability shaped the development of voting rights in the United States, from the time of the first prohibition against idiots and lunatics voting until the 19th amendment granting women the right to vote. This project rewrites the traditional trajectory of white male democratization by focusing on those white men who were disenfranchised throughout this period. Taking a firm gaze at these men who were left behind, this dissertation denaturalizes the disenfranchisement of people with mental disabilities that the *New York Times* and Chairman DeLorenzo take for granted and places the phenomenon within the historical, social, and political context of mental differentiation that de Tocqueville intuited was so important. Through a fine-grained analysis of constitutional and legislative debates, court cases, trade documents, newspapers, congressional hearings, and petitions, I argue that states created a regime of “compulsory able-mindedness”³ for voting, and established lunatics and idiots as a pariah group for disenfranchisement.

Starting with Maine in 1819, state legislators barred suffrage for reasons of

Clinical Law 307 (2006-2007); David Drachman, “Fading Minds and Hanging Chads: Alzheimer’s Disease and the Right to Vote,” *Cerebrum* (January 1, 2004) Available At <http://www.dana.org/news/cerebrum/detail.aspx?id=1258>; Jason H. Karlawish et al., “Addressing the Ethical, Legal, and Social Issues Raised by Voting by Persons with Dementia,” *JAMA* 292, no. 11 (2004): 1345-1350; Brian Ott, William Heindel and George Papandonatos, “A Survey of Voter Participation by Cognitively Impaired Elderly Patients,” *60 Neurology* 1546 (2003); Jason H. Karlawish et al., “Do Persons with Dementia Vote?” *58 Neurology* 1100 (2002); Susan A. MacManus, *Targeting Senior Voters: Campaign Outreach to Elders and Others with Special Needs* (Lanham, MD: Rowman & Littlefield, 2000).

³ Compulsory able-bodiedness has received far more attention from scholars. See, e.g., Robert McRuer, “Compulsory Able-Bodiedness and Queer/Disabled Existence,” in Lennard J. Davis, ed. *The Disability Studies Reader*. 2nd ed. Routledge, 88-99 (2006).

mental incapacity in their statutes and constitutions. These enactments did not go unchallenged, as both lunatics and idiots voted and politicians challenged their votes. Subsequent litigation and congressional hearings on contested elections tested the judges and legislators that were charged with determining who were lunatics and idiots and thus ineligible to vote. As the century progressed, the rationale for disenfranchisement changed from one of dependency as a marker of who was or wasn't a full political citizen, to perceived lack of mental competency in the mechanics of voting. All the while, the legal system maintained that lunatics and idiots did not possess the requisite minds for voting.

In addition to white male lunatics and idiots, two groups, African Americans and women, were labeled as unfit for suffrage and full political citizenship because of their alleged mental deficiencies. By examining the arguments of suffrage activists, I argue that these two groups also deployed and reified the category of compulsory able-mindedness as they fought for the franchise.

Finally, I conclude by gesturing towards the changed landscape of the present, where statutory provisions such as the Americans with Disabilities Act and the Voting Rights Act, and political movements such as the disability rights movement, have successfully challenged a range of voting exclusions, yet have tended to ignore voting bans for people with mental disabilities.

Historiographical Framework

Analyzing the situational and ideological context of the disenfranchisement of people with mental disabilities requires attention to the history of psychiatry, citizenship, voting, and disability studies. In turn, this interdisciplinary approach enhances the state of disability, voting, and legal history scholarship.

Disability Studies

Disability studies has emerged as a new force in the academic world. It has an explicitly civil rights-oriented framework that challenges the older medically-focused model of disability. This earlier model, mostly developed by scholars in professions such as medicine, kinesiology, and education, tended to privilege the viewpoint of doctors, therapists, and other allied professionals who diagnose, label, and treat those considered disabled.⁴ In its place, since the 1990s, disability scholars advocate a sociocultural model of disability that foregrounds the lived experience of a person with an impairment interacting with the world.⁵ Thus, while a person may have an

⁴ See Simi Linton, *Claiming Disability* (New York: NYU Press, 1998), referred to in Sagit Mor, "Between Charity, Welfare, and Warfare: A Disability Legal Studies Analysis of Privilege and Neglect in Israeli Disability Policy," *Yale Journal of Law and Humanities* 18, no. 63 (2006): 73; Richard K. Scotch, "Medical Model of Disability," in Susan Burch, ed. *Encyclopedia of American Disability History*: 602-603.

⁵ Tobin Siebers. *Disability Theory* (Ann Arbor: University of Michigan Press, 2008); Ruth Colker, "Anti-Subordination above All: A Disability Perspective," 82 *Notre Dame Law Review* 1415 (2006-2007); Gale Whiteneck, "Conceptual Models of Disability: Past, Present, and Future," in *Workshop on Disability in America: A New Look* Marilyn J. Field, Alan M. Jette, and Linda Martin, eds. (Washington, DC: National Academies Press, 2006): 50-66, Appendix B; L. Terzi, "The Social Model of Disability: A Philosophical Critique," *Journal of Applied Philosophy* 21 (2004): 141-157; Paul K. Longmore, *Why I Burned My Book and Other Essays on Disability* (Philadelphia: Temple University Press, 2003); Colin Barnes, Mike Oliver, and Len Barton, eds., *Disability Studies Today* (Cambridge: Polity, 2002); Tom Shakespeare, "The Social Model of Disability: An Outdated Ideology?" *Research in Social Science and Disability* 2 (2002): 9-28; Paul K. Longmore and Lauri Umansky, eds., *The New Disability History: American Perspectives* (New York: New York University Press, 2001); Lennard J. Davis, ed., *The Disability Studies Reader* (New York: Routledge,

impairment, it is social context that gives meaning to her disability. For example, someone's impairment could be the inability to walk, but her disability takes shape in a community that decides to fund (or not) wheelchairs, sidewalk cuts and ramps. In the words of legal scholar Sagit Mor:

Disability studies investigates issues such as the social construction of disability, ableism and the power structure that supports and enhances the privileged status and conditions of non-disabled persons in relation to disabled persons, the genealogy of social categories such as normalcy, and the politics of bodily variations. The basic approach that all disability studies scholars share is that disability is not an inherent, immutable trait located in the disabled person, but a result of socio-cultural dynamics that occur in interactions between society and people with disabilities.⁶

Disability studies scholars emphasize the importance of the structural landscape in shaping the lived experiences of people with disabilities. Disability studies has certainly had its successes in altering this landscape, most notably, the Americans with Disabilities Act of 1990 (ADA), and it is gaining a foothold in the academy.

Though the sociocultural model of disability studies is grounded in social context that changes over time, the field's current strength is in cultural studies instead of history.⁷ These cultural works examine the representations of people with disabilities,

1997); Claire H. Liachowitz, *Disability as a Social Construct: Legislative Roots* (Philadelphia: University of Pennsylvania Press, 1988).

⁶ Mor, "Between Charity, Welfare, and Warfare" 64.

⁷ For representative cultural work, see Rosemarie Garland Thomson, *Staring: How We Look*. (Oxford: Oxford University Press, 2009); Tobin Siebers, *Disability Theory* (Ann Arbor: University of Michigan Press, 2008); Martha Stoddard Holmes, *Fictions of Affliction: Physical Disability in Victorian Culture* (Ann Arbor: University of Michigan Press, 2004); Lennard J. Davis, *Bending over Backwards: Disability, Dismodernism & Other Difficult Positions* (New York: New York University Press, 2002); Rachel Adams, *Sideshow U.S.A.: Freaks and the American Cultural Imagination* (Chicago: University of Chicago Press, 2001); Helen Deutsch

mostly in the present, but often merely gesture to where and how these representations developed historically. Disability history also has a presentist-bent as it is has focused upon the emergence and events of the modern disability movement, that is, from approximately the 1970s to the present, and on the eugenics movement of the early 1900s.⁸ Earlier works often privilege biographies of notable figures such as Helen Keller, rather than describing what historian Paul Longmore labeled “a common base of experience” for people with disabilities.⁹

and Felicity Nussbaum, eds., *“Defects”: Engendering the Modern Body* (Ann Arbor: University of Michigan Press, 2000); Ruth Butler and Hester Parr, eds., *Mind and Body Spaces: Geographies of Illness, Impairment and Disability* (New York: Routledge, 1999); Mairian Corker, “Differences, Conflations and Foundations: The Limits to ‘Accurate’ Theoretical Representation of Disabled People’s Experience?” *Disability and Society* 14 (1999): 627–642; Mairian Corker, *Disability Discourse* (Buckingham: Open University Press, 1999); Lennard J. Davis, “Crips Strike Back: The Rise of Disability Studies,” *American Literary History* 11, no. 3 (Autumn 1999): 500-512; Lennard J. Davis, ed., *The Disability Studies Reader* (New York: Routledge, 1997); Rosemarie Garland Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997); Rosemarie Garland Thomson, ed., *Freakery: Cultural Spectacles of the Extraordinary Body* (New York: New York University Press, 1996); Lennard J. Davis, *Enforcing Normalcy: Disability, Deafness, and the Body* (New York: Verso, 1995); Benedicte Ingstad and Susan R. Whyte, eds., *Disability and Culture* (Berkeley: University of California Press, 1995); Leslie Fiedler, *Freaks: Myths and Images of the Secret Self* (New York: Simon and Schuster, 1978).

⁸ Alexandra M. Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (Berkeley: University of California Press, 2005); Ian Robert Dowbiggin, *Keeping America Sane: Psychiatry and Eugenics in the United States and Canada, 1880-1940* (Ithaca: Cornell University Press, 1997); David T. Mitchell and Sharon L. Snyder, “The Eugenic Atlantic: Race, Disability, and the Making of an International Eugenic Science, 1800-1945.” *Disability & Society* 18 (December 2003): 843-864. For scholars calling for an historical approach to studying people with mental disabilities, see, e.g., Susan Burch and Ian Sutherland, “Who’s Not Yet Here? American Disability History,” *Radical History Review* 94 (2006): 127–147; Catherine J. Kudlick and Paul Longmore, “Disability and the Transformation of Historians’ Public Sphere,” *Perspectives: The Newsmagazine of the American Historical Association* 44, no. 8 (2006): 8–12; Catherine J. Kudlick, “Disability History: Why We Need Another ‘Other,’” *American Historical Review* 108 (June 2003): 763-93; Paul K. Longmore, “Uncovering the Hidden History of People with Disabilities,” *Reviews in American History* 15 (1987): 355-364.

⁹ Paul K. Longmore and Lauri Umansky, eds., *The New Disability History: American Perspectives* (New York: New York University Press, 2001): 12.

Although disability studies identifies the 19th century as a key turning point, where the “medical model” of disability developed, the categories of disability became salient and stigmatized, and the number of institutions for the disabled exploded, the period remains understudied.¹⁰ In particular, the social construction of disability and the political implications of that label are underdeveloped. Significantly, this historiography does not catalog what preceded and shaped the period, nor does it identify the law as a coterminous axis of power. My dissertation lays the groundwork for describing a “common sense model” of disability, where lay or vernacular understandings of disability are invoked by the state for the classification and restraint

¹⁰ As Tom Shakespeare observes, the “medical model” of disability is used as a catch-all shorthand that is undertheorized and historicized. *Disability Rights and Wrongs* London & New York: Routledge, 2006, 15–19. Julie Anderson, “Review Essay: Voices in the Darkness: Representations of Disability in Historical Research,” *Journal of Contemporary History* 44, no. 1 (January 2009): 107–116; Douglas C. Baynton, “Disability in History,” *Perspectives: The Newsmagazine of the American Historical Association* (2006) Available at <http://www.historians.org/perspectives/issues/2006/0611/0611for1.cfm>; Susan Burch and Ian Sutherland, “Who’s Not Yet Here? American Disability History,” *Radical History Review* 94 (2006): 127–147; Susan Burch, “Disability History: Suggested Readings – An Annotated Bibliography,” *The Public Historian* 27 (2005): 63–74; Shelley Tremain, *Foucault and the Government of Disability* (Ann Arbor: University of Michigan Press, 2005); Mark Rapley, *The Social Construction of Intellectual Disability* (New York: Cambridge University Press, 2004); Catherine J. Kudlick, “Disability History: Why We Need Another ‘Other.’” *American Historical Review* 108 (June 2003): 763–93; Paul K. Longmore, *Why I Burned My Book and Other Essays on Disability* (Philadelphia: Temple University Press, 2003); Rachel Adams, *Sideshow U.S.A.: Freaks and the American Cultural Imagination* (Chicago: University of Chicago Press, 2001); Douglas C. Baynton, “Disability and the Justification of Inequality in American History.” in *The New Disability History: American Perspectives*, eds. Paul K. Longmore and Lauri Umansky (New York: New York University Press, 2001); Helen Deutsch and Felicity Nussbaum, eds., “Defects”; Elizabeth Bredberg, “Writing Disability History: Problems, Perspectives and Sources,” *Disability and Society* 14 (1999): 189–201; Henri-Jacques Stiker, *A History of Disability* (Ann Arbor: University of Michigan Press, 1999); Herbert C. Covey, *Social Perceptions of People with Disabilities in History* (Springfield, IL: Charles C. Thomas, 1998); Simi Linton, *Claiming Disability* (New York: NYU Press, 1998); James W. Trent, *Inventing the Feeble Mind: A History of Mental Retardation in the United States* (Berkeley: University of California Press, 1994); Paul K. Longmore, “Uncovering the Hidden History of People with Disabilities,” *Reviews in American History* 15 (1987): 355–364; Deborah A. Stone, *The Disabled State*. (London: Macmillan, 1985); Albert Deutsch, *The Mentally Ill In America: A History of Their Care and Treatment From Colonial Times*, 2nd ed. rev. and enl. (New York: Columbia University Press, 1949).

of people with disabilities and then translated into legal language for harder and more formal restrictions. I analyze the influence of medicine upon disability as a historical and legal process, rather than as a static event.¹¹ Likewise, I capture the dynamism and contradictions of labeling disabilities, as different historical actors utilized and challenged competing definitions. Finally, although institutions will play an important role in the dissertation, I remain cognizant of the reality that most people with disabilities lived their lives outside the walls of an institution.¹² Additionally, as chapters 2 and 3 illustrate, institutional residents are not the civilly dead citizens presumed by elites. In fact, they prized their political citizenship and voted even while constrained.

My dissertation seeks to capitalize on the insights developed by disability cultural scholars, notably the importance of visibility in regards to classification, discomfort with “ugly,” “crippled,” or “maimed” bodies, and how the fear of becoming disabled animate ableist prejudice.¹³ At the same time, I also heed theorist Rosemary

¹¹ See, e.g., Peter Conrad, *The Medicalization of Society: On the Transformation of Human Conditions into Treatable Disorders* (Baltimore: Johns Hopkins University Press, 2007).

¹² Nic Clarke, “Opening Closed Doors and Breaching High Walls: Some Approaches for Studying Intellectual Disability in Canadian History,” *Histoire Sociale/Social History* 39 (2006), 467–485; Paul K. Longmore and David Goldberger, “Political Movements of People with Disabilities: The League of the Physically Handicapped, 1945-38.” *Disability Studies Quarterly* 17, no. 2 (Spring 1997): 95.

¹³ Licia Carlson, *The Faces of Intellectual Disability: Philosophical Reflections* (Bloomington: Indiana University Press, 2010); Rose Galvin, “A Genealogy of the Disabled Identity in Relation to Work and Sexuality,” *Disability and Society* 21 (2006): 499–512; Thomson, *Staring*; Siebers, *Disability Theory*; Stoddard Holmes, *Fictions of Affliction*; Davis, *Bending over Backwards*; Adams, *Sideshow U.S.A.*; Hannah R. Joyner, *From Pity to Pride: Growing Up Deaf in the Old South* (Washington, D.C.: Gallaudet University Press, 2004); Halle Gayle Lewis, “‘Cripples are not the Dependents One is Led to Think’: Work and Disability in Industrializing Cleveland, 1861–1916,” Ph.D. Dissertation, State University of New York at Binghamton,

Garland Thomson's warning that "the actual experience of disability is more dynamic than representation usually suggests."¹⁴ Moreover, understanding what disability *means* requires historical analysis. Disability studies emphasizes that the marginalization of people with disabilities is not a natural phenomenon, but one that is governed by sociopolitical processes that change over time. As Evelyn Brooks Higginbotham wrote in her pivotal article, "African-American Women's History and the Metalanguage of Race," "[t]o understand race as a metalanguage, we must recognize its historical and material grounding – what Russian linguist and critic M.M. Bakhtin referred to as "the power of the word to mean. This power evolves from

2004; Martha Stoddard Holmes, *Fictions of Affliction: Physical Disability in Victorian Culture* (Ann Arbor: University of Michigan Press, 2004); Deutsch, H., "Defects"; Butler, *Mind and Body Spaces*; Corker, "Differences, Conflations and Foundations"; Corker, *Disability Discourse*; Mary Klages, *Woeful Afflictions: Disability and Sentimentality in Victorian America*. (Philadelphia: University of Pennsylvania Press, 1999); Davis, "Crips Strike Back"; Carol Thomas, *Female Forms: Experiencing and Understanding Disability* (Philadelphia: Open University Press, 1999); Herbert C. Covey, *Social Perceptions of People with Disabilities in History* (Springfield, Ill.: Charles C. Thomas, 1998); David T. Mitchell and Sharon L. Snyder. eds., *The Body and Physical Difference: Discourses of Disability* (Ann Arbor: University of Michigan Press, 1997); Cindy LaCom, "'It Is More than Lame': Female Disability, Sexuality, and the Maternal in the Nineteenth-Century Novel," in *The Body and Physical Difference: Discourses of Disability*, David T. Mitchell and Sharon L. Snyder, eds. (Ann Arbor: University of Michigan Press, 1997): 189-201; Davis, *Disability Studies Reader*; Thomson, *Extraordinary Bodies*; Thomson, ed. *Freakery*; Davis, *Enforcing Normalcy*; Benedicte Ingstad and Susan R. Whyte. eds., *Disability and Culture* (Berkeley: University of California Press, 1995); Sander Gilman, *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness* (Ithaca, NY: Cornell University Press, 1985); Sander Gilman, *Seeing the Insane* (New York: John Wiley, 1982); Vic Finkelstein, "Disability and the Helper/Helped Relationship. An Historical View," in *Handicap in a Social World*. A. Brechin et al. eds., (London: Hodder & Stoughton, 1981): 58-64; Frank Bowe, *Handicapping America: Barriers to Disabled People* (New York: Harper & Row, 1978); Fiedler, *Freaks*; Marcia Pearce Burgdorf and Robert Burgdorf Jr., "A History of Unequal Treatment: The Qualifications of Handicapped Persons as a 'Suspect Class' under the Equal Protection Clause," *Santa Clara Law Review* 15 (1975); Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Englewood Cliffs, NJ: Prentice Hall, 1963).

¹⁴ Thomson, *Extraordinary Bodies*, 12.

concrete situational and ideological contexts, that is, from a position of enunciation that reflects not only time and place but values as well.”¹⁵

As Higginbotham’s insight suggests, the work of pioneers in similar fields such as race and gender studies offer provocative contributions to my work on disability. For example, historian Joan Scott described a 3-stage development in women and gender studies that (1) located women presumed to be absent in history and told their stories; (2) described the social construction of gender; and (3) identified and analyzed gender as a dynamic and important process in historical change. In this last stage, gender was not necessarily attached to particular bodies, but it was “a constitutive element of social relationships based on perceived differences...and a primary way of signifying relationships of power.”¹⁶

Disability studies has been more productive in the first two stages Scott describes, and less so for the last stage; my project incorporates all three. I identify people who were flagged as disabled when they voted, demonstrate how social context developed the concept of mental deficiency for suffrage and attached it to particular bodies, and analyze how mental disability mattered in determinations of citizenship and suffrage. Though synthetic works about the nineteenth century increasingly note

¹⁵ Evelyn Brooks Higginbotham, “African-American Women’s History and the Metalanguage of Race.” *Signs: Journal of Women in Culture & Society* 17, no. 2 (1992): 256.

¹⁶ Joan W. Scott, “Gender: A Useful Category of Historical Analysis.” *American Historical Review* 91, no. 5 (Dec. 1986): 1067.

“ability” as an important axis of analysis,¹⁷ the evolution and interweaving of disability with the development of the modern American state and the rise of the rights-bearing individual remains understudied.¹⁸ Here, state actors used mental disability to form pariah groups for suffrage and suffrage activists emphasized their mental competency in arguments for enfranchisement.

Furthermore, unlike most of the current scholarship on disability and voting, my project focuses upon mental disability. Like most disability studies work, scholarship at the intersection of disability and suffrage centers upon the modern problems of access, such as whether ramps are available for wheelchair users at polling places. These issues are more of a dilemma for people with physical disabilities than either the historical foundations or current absolute bans on voting for people with mental disabilities.¹⁹

¹⁷ For instance Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States, New Histories of American Law* (New York: Cambridge University Press, 2010): 180-81.

¹⁸ Longmore and Umansky note: “For political and policy historians, disability is a significant factor in the development of the modern state, by raising questions of who deserves the government’s assistance and protection, what constitutes a capable citizen, and who merits the full rights of citizenship.” Paul K. Longmore and Lauri Umansky, *The New Disability History*, 766. A notable exception to this trend is Douglas Baynton’s important work. In his essay, “Disability and the Justification for Inequality in American History,” Baynton illustrates how disempowered groups such as women and immigrants used the language of disability in an attempt to bolster their citizenship claims.

¹⁹ See, e.g., Brescia, “Modernizing State Voting Laws”; Ryan Kelley, “Toward an Unconditional Right to Vote for Persons with Mental Disabilities: Reconciling State Law with Constitutional Guarantees.” 30 *Boston College Third World Law Journal* 359 (2010); Marcus Redley, Julian C. Hughes, Anthony Holland, “Voting and Mental Capacity,” *British Medical Journal* 341 (2010); Jennifer A. Bindel, “Equal Protection Jurisprudence and the Voting Rights of Persons with Diminished Mental Capacities,” 65 *N.Y.U. Annual Survey of American Law* 87 (2009-2010); Bosquet, “The Vote of Acute Medical Inpatients”; Raad, “The Capacity to Vote”; Flynn, “One Person, One Vote”; Keeley, “Participation in the 2005 General Election”; “The Law of Mental Illness,” 121 *Harvard Law Review* 1114 (2007-2008); Hurme, “Defining and Assessing Capacity to Vote”; Karlawish, “Voting by Elderly Persons”; Pamela S. Karlan, “Framing the Voting Rights Claims of Cognitively Impaired Individuals,” *McGeorge Law Review* 38 (2007); Ted Selker, “The Technology of Access: Allowing People of Age to Vote for Themselves,” *McGeorge Law Review* 38 (2007); Schrauben, “Ensuring the Fundamental Right to Vote”; Michael E. Waterstone, “Lane, Fundamental

This is also an intra-disability project that analyzes variation within disability formation. Progressive era judges and legislators designated people with physical disabilities as those with “good” disabilities worthy of voter accommodation and older voters with mental difficulties as people entirely outside the rubric of disability. By contrast, lunacy and idiocy were “bad” disabilities that merited disenfranchisement.

While I do not identify, in the 19th century, a social movement of people with mental disabilities who fought for suffrage, an interesting complication of my project is that, in attempting to vote, my historical actors resisted the label of mental disability – or its historical antecedents -- as one that captures their identity and experience. Their perspectives are an important part of disability studies, nonetheless, as they are an excellent way to look at contestations over the meaning and definition of mental disability, as well as what it means to occupy – or refuse to occupy – the category.

Rights, and Voting,” 56 *Alabama Law Review* 793 (2005); Drachman, “Fading Minds and Hanging Chads”; Karlawish, “Addressing the Ethical, Legal, and Social Issues Raised by Voting”; Hollister Bundy, “Election Reform, Polling Place Accessibility, and the Voting Rights of the Disabled,” *Election Law Journal* 2, no. 2 (2003); Pamela S. Karlan, “Ballots and Bullets: The Exceptional History of the Right to Vote,” *University of Cincinnati Law Review* 71 (2003); Ott, “A Survey of Voter Participation”; Kingshuk K. Roy, “Note, Sleeping Watchdogs of Personal Liberty: State Laws Disenfranchising the Elderly,” *Elder Law Journal* 11 (2003); Karlawish, “Do Persons with Dementia Vote?”; Schriener, “The Competence Line”; Blais, “Deciding Who Has The Right To Vote”; MacManus, *Targeting Senior Voters*; Schriener, “No Right Is More Precious”; Appelbaum, “I Vote. I Count”; Schriener, “The Last Suffrage Movement”; Lawrence A. Kane, *The Legal Rights of Citizens With Mental Retardation* (Lanham, MD: University Press of America, 1988); Note, “Mental Disability and the Right to Vote”; Michael Kindred, *The Mentally Retarded Citizen and the Law* (New York: Free Press, 1976); Barbara Armstrong, “The Mentally Disabled and the Right to Vote,” 27 *Hospital & Community Psychiatry* (1976): 577-582; Marcia Pearce Burgdorf and Jr. Robert Burgdorf, “A History of Unequal Treatment: The Qualifications of Handicapped Persons as a ‘Suspect Class’ under the Equal Protection Clause,” *Santa Clara Law Review* 15 (1975); Elizabeth Ogg, *Securing the Legal Rights of Retarded Persons* (New York: Public Affairs Committee, 1973); Bruce J. Ennis and Paul R. Friedman, *Legal Rights of the Mentally Handicapped* (New York: Practising Law Institute, Mental Health Law Project, 1973).

Furthermore, rather than assuming that disability is a degraded status,²⁰ I show *why* people tried to separate themselves from claims that they were mentally deficient, and what made it such a potent charge of slander. A disability label had important social and political repercussions. As we know, people with mental impairments were not the only ones who were denied the franchise. And one of the key accusations against those other groups such as women and African Americans was that they lacked the mental capacity for full citizenship. Historians have a tendency to treat these accusations as metaphors, but I go further and think about how mental impairment was classed, gendered, and raced, and how the negative association between mental disability and degraded citizenship led people with mental impairment without allies in their fight for full civil rights.

Psychiatry

Recent scholarship in the history of psychiatry follows in the footsteps of pioneers such as Michel Foucault, Norman Dain, Gerald Grob, and David Rothman, and identifies the 19th century as a period of rapid expansion in the discipline of American psychiatry and also an era where insanity and idiocy became matters of

²⁰ Ellen Carol DuBois, *Elizabeth Cady Stanton, Feminist as Thinker: A Reader In Documents and Essays* (New York: New York University Press, 2007); Daryl Michael Scott, *Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996* (University of North Carolina Press, 1997); Mark C. Carnes and Clyde Griffen, eds., *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago: University of Chicago Press, 1990); Louise Noun, *Strongminded Women: The Emergence of the Woman-Suffrage Movement in Iowa* (Ames, IA: Iowa State Press, 1969); Aileen S. Kraditor, *The Ideas of the Woman Suffrage Movement, 1890-1920* (New York: Columbia University Press, 1965); Alma Lutz, *Susan B. Anthony: Rebel, Crusader, Humanitarian*. (Boston: Beacon Press, 1959).

intense public concern.²¹ American psychiatrists reshaped and redefined European insights into the mind and created a profession centered upon benevolent, paternalistic, non-punitive treatment, coined “moral treatment” by French physician Philippe Pinel, and focused upon institutional supervision. This emphasis on asylums fit within an era of reform and institution building.²² Public and private reformers built orphanages,

²¹ See, e.g., R. Gregory Lande, *Madness, Malingering & Malfeasance: The Transformation of Psychiatry and the Law in the Civil War Era* (Dulles, VA: Brassey's Inc., 2003); Ian Robert Dowbiggin, *Keeping America Sane: Psychiatry and Eugenics in the United States and Canada, 1880-1940* (Ithaca: Cornell University Press, 1997); Peter McCandless, *Moonlight, Magnolias and Madness: Insanity in South Carolina from the Colonial Period to the Progressive Era* (Chapel Hill: University of North Carolina Press, 1996); Elizabeth Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender, and Power* (Princeton, NJ: Princeton University Press, 1994); Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* Richard Howard trans. (New York: Vintage Books, 1988); John Hughes, *In the Law's Darkness: Isaac Ray and the Medical Jurisprudence of Insanity in Nineteenth Century America* (Oceana Publications, 1986); Gerald N. Grob, *Mental Illness and American Society, 1875-1940* (Princeton, NJ: Princeton University Press, 1983); Irving H. Bartlett, *The American Mind in the Mid-Nineteenth Century* (Arlington Heights: H. Davidson, 1982); Richard W. Fox, *So Far Disordered In Mind: Insanity In California, 1870-1930* (Berkeley: University of California Press, 1979); Gerald N. Grob, *Edward Jarvis and the Medical World of Nineteenth-Century America* (Knoxville: University of Tennessee Press, 1978); Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception* (New York: Pantheon Books, 1973); Michel Foucault, *The Order of Things* (New York: Vintage Books, 1973); Norman Dain, *Disordered Minds: The First Century of Eastern State Hospital in Williamsburg, Virginia, 1766-1866* (Williamsburg, VA: The Colonial Williamsburg, 1971); Gerald N. Grob, *The State and the Mentally Ill: A History of Worcester State Hospital in Massachusetts, 1830-1920* (Chapel Hill, University of North Carolina Press, 1966); Norman Dain, *Concepts of Insanity In the United States, 1789-1865* (New Brunswick, NJ: Rutgers University Press, 1964).

²² See, e.g., Benjamin Reiss, *Theaters of Madness: Insane Asylums and Nineteenth-Century American Culture* (Chicago: University of Chicago Press, 2008); Richard L. Lael, Barbara Brazos, and Margot Ford McMillen, *Evolution of a Missouri Asylum: Fulton State Hospital, 1851-2006* (Columbia, MO: University of Missouri Press, 2007); Carla Yanni, *The Architecture of Madness: Insane Asylums in the United States* (Minneapolis: University of Minnesota Press, 2007); Benjamin Reiss, “Letters from Asylumia: The *Opal* and the Cultural Work of the Lunatic Asylum, 1851-1860,” *American Literary History* 16: 1 (2004): 1-28; Lawrence B. Goodheart, *Mad Yankees: The Hartford Retreat for the Insane and Nineteenth-Century Psychiatry* (University of Massachusetts Press, 2003); David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (New York: Aldine de Gruyter, 2002); David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Aldine de Gruyter, 2002); Joseph Melling and Bill Forsythe, *Insanity, Institutions and Society, 1800-1914: A Social History of Madness in Comparative Perspective* (London: Routledge, 1999); Kathleen Jones, *Asylums and After: A Revised History of the Mental Health Services From the Early 18th Century to the 1990s* (London: Athlone, 1993); Abraham S. Luchins, “The Cult of Curability and the Doctrine of Perfectibility: Social Context of the Nineteenth-Century American Asylum Movement,” *3 History of Psychiatry* (1992): 203-220; Ellen Dwyer, *Homes for the Mad: Life Inside Two Nineteenth-Century Asylums* (New Brunswick, NJ: Rutgers University Press, 1987); Nancy Tomes, *A Generous Confidence: Thomas Story Kirkbride and the Art of Asylum-Keeping, 1840-1883*

prisons, asylums, schools, hospitals, sanitariums, and similar establishments in an effort to solve social problems and generally improve society.²³

As the rise of public institutions for people with mental disabilities suggests, the subject of mental ailments also caught the attention of the 19th century American state. While prior to the 19th century local governments rarely initiated formal action against the insane or feeble-minded unless they were violent, over the course of the 1800s, the state was increasingly interested in classifying, monitoring, and detaining people with mental disabilities.²⁴ From 1840 until 1890, the U.S. census categorized people with insanity and idiocy by region and country of origin. Starting in 1882 with the Chinese Exclusion Act, immigration laws restricted people with mental disabilities from entering the country.²⁵ The use of civil confinement exploded,²⁶ as well as the extension

(Cambridge: Cambridge University Press, 1984); Paul Starr, *The Social Transformation of American Medicine* (New York: Basic Books, 1982).

²³ Leonard C. Schlup, *A Documentary Description of Health, Medicine, Disease, and Crime In Late Nineteenth-Century America* (Lewiston, NY: Edwin Mellen Press, 2009); Patricia D'Antonio, *Founding Friends: Families, Staff, and Patients at the Friends Asylum in Early Nineteenth-Century Philadelphia* (Bethlehem, PA: Lehigh University Press, 2006); Thomas J. Brown, *Dorthea Dix: New England Reformer* (Cambridge, MA: Harvard University Press, 1998); David Gollaher, *Voice for the Mad: The Life of Dorthea Dix* (New York: Free Press, 1995); Nancy Tomes, *A Generous Confidence*.

²⁴ Susanna Blumenthal, "The Default Legal Person," 54 *UCLA Law Review* (2007): 1135-1265; Dain, *Concepts of Insanity*.

²⁵ "Convicts, lunatics, idiots, and persons likely to become a public charge" were prohibited from entering the country, along with Chinese immigrants. Immigration Act, ch. 376, 22 Stat. 214 (1882). For literature on mental disability and immigration, see, e.g., Douglas C. Baynton, "Defectives in the Land: Disability and American Immigration Policy, 1882-1924," *Journal of American Ethnic History* 24, no. 3 (Spring 2005): 31-44; David A. Gerber, "Comment: Immigration History and Disability History," *Journal of American Ethnic History* 24, no. 3 (Spring 2005): 49-53; Alan M. Kraut, "Comment: Health, Disease, and Immigration Policy," *Journal of American Ethnic History* 24, no. 3 (Spring 2005): 54-58; Mark C. Weber, "Opening the Golden Door: Disability and the Law of Immigration," 25 *Immigration and Nationality Law Review* (2004): 353-375; Martha Mabie Gardner, "The Qualities of a Citizen: Women, Immigration, and Citizenship in the United States, 1870-1965," Ph.D. Dissertation, Stanford University, 2000; Oscar M. II Trelles and James F. Bailey III, *Immigration and Nationality Acts, Legislative Histories and Related Documents* (Buffalo: Hein, 1979);

of laws over new types of people considered mentally disabled, such as “drunkards” or “persons of unsound mind.”²⁷

As a subfield, medical jurisprudence has described how the law classified those deemed insane.²⁸ My project breaks new ground in looking at an example of public law, the ways in which the concepts of insanity and idiocy shaped the conferral or denial of political rights and political participation and how changes in the welfare state caused alterations in political membership. My dissertation offers an example of how

E.H. Mullan, “Mental Examination of Immigrants: Administration and Line Inspection at Ellis Island,” *Public Health Reports* 32 (May 18, 1917): 733-746; C.P. Knight, “The Detection of the Mentally Defective Among Immigrants,” *Journal of the American Medical Association* 60 (October 1915): 751-756; E.K. Sprague, “Mental Examination of Immigrants,” *The Survey* 51 (1914): 466-68; L. E. Coper, “The Medical Examination of Arriving Aliens,” in *Medical Problems of Immigration*, Papers of the American Academy of Medicine (Easton, PA: American Academy of Medicine Press, 1913): 31-42; John J. S. Rodgers, “The Administration of Immigration Laws,” in *Medical Problems of Immigration*, Papers of the American Academy of Medicine (Easton, PA: American Academy of Medicine Press, 1913): 21-30; Thomas W. Salmon, “Immigration and the Mixture of Races in Relation to the Mental Health of the Nation,” in *Medical Treatment of Nervous and Mental Disease*, eds. W.A. White and S.E. Jelliffe (New York: Lea and Febiger, 1913): 241-286; L.L. Williams, “The Medical Examination of Mentally Defective Aliens: Its Scope and Limitations,” *American Journal of Insanity* 71 (1914): 257-68.

²⁶ Blumenthal, “Default Legal Person,” 1191. Valerie L. Collins, “Camouflaged Legitimacy: Civil Commitment, Property Rights, and Legal Isolation,” 52 *Howard Law Journal* 407 (2008-2009); Sallyanne Payton, “The Concept of the Person in the *Parens Patriae* Jurisdiction Over Previously Competent Persons,” 17 *Journal of Medicine & Philosophy* (1992): 605-45; Ellen Dwyer, “Civil Commitment Laws in Nineteenth-Century New York,” 6 *Behavioral Sciences & Law* (1987): 79-98; Alan Dershowitz, “The Origins of Preventive Confinement in Anglo-American Law, Part II: The American Experience,” 43 *University of Cincinnati Law Review* (1974): 781-846.

²⁷ Blumenthal, “Default Legal Person,” 1179-80. Elaine Frantz Parsons, *Manhood Lost: Fallen Drunkards and Redeeming Women in the Nineteenth-Century United States* (Baltimore: Johns Hopkins University Press, 2003); Lawrence M. Friedman, et al. “Guardians: A Research Note,” 40 *American Journal of Legal History* (1996): 146-65; Payton, *The Concept of the Person*, 617-39.

²⁸ Blumenthal, “Default Legal Person”; Matthew F. Shaw, *After the Insanity Defense: When the Acquitted Return to the Community* (New York: LFB Scholarly Pub. LLC, 2007); Susanna Blumenthal, “The Deviance of the Will: Policing the Bounds of Testamentary Freedom in Nineteenth-Century America,” *Harvard Law Review* 119 (2006): 959-1034; Charles E. Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age* (University of Chicago Press, 1995); John Hughes, *In the Law’s Darkness: Isaac Ray and the Medical Jurisprudence of Insanity in Nineteenth Century America* (Oceana Publications, 1986).

psychiatry was involved in creating legal categories that ensnared people in a subordinate relationship to the state. Furthermore, as people with mental disabilities were increasingly caught up in a web of state-mandated restrictions ranging from guardianship to confinement, my project depicts how different state and legal apparatuses interacted and how mental disability was used as both a matter of status as well as lived experience. For example, while authors such as Michel Foucault tend to treat deviance as an all-or-nothing proposition,²⁹ here, I examine whether a person who faced a lunacy commission or probate court hearing and was assessed as insane was then barred from voting. Oftentimes a person considered legally insane still voted, while men not officially designated as insane were flagged at the polls for mental incompetence. Furthermore, my dissertation pulls the history of psychiatry further into the orbit of disability studies. If we focus solely on the thoughts of doctors, we presume the civil death of those they treated instead of noting the resistance that people had to doctors' designations. Rather than centering the thoughts of doctors, I focus upon the people whom these doctors attempted to classify and define and in turn these doctors' attempts to render their judgments supreme in the legal system. This emphasis denaturalizes the categories within which people with impairments found themselves.

²⁹ Shelley Tremain, *Foucault and the Government of Disability* (Ann Arbor: University of Michigan Press, 2005); Michel Foucault, *Discipline and Punish: The Birth of the Prison* Alan Sheridan trans. (New York: Vintage Book, 1995); Graham Burchell, Colin Gordon, and Peter Miller, eds., *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991); Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* Richard Howard trans. (New York: Vintage Books, 1988); Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception*. (New York: Pantheon Books, 1973); Michel Foucault, *The Order of Things* (New York: Vintage Books, 1973).

It also weakens the firm hold that the medical model has upon determining disability formation by questioning the primacy of medical, versus legal or community definitions of disability.

Legal History

I take care to ground this legal research so that law and society are mutually constitutive, interrelated, and complex. Legal scholarship is largely a story written from above, where powerful, clearly “legal” authorities enact rules that constrain those who are less empowered. Yet, as historian Nancy Cott has noted, “law is both internally conflicted and plural in origin” as it “suppl[ies] an authoritative composite face.”³⁰ Over the past few decades, several noted legal historians have challenged the “law from above” model by demonstrating the significance of custom, the importance of local courts and community norms, and the multiple locations and sources of legal doctrine. Significantly, such alternative methodologies have uncovered original information about the disempowered voices only hinted at in elite legal realms. Their investigations have shattered the power of law to, in the words of Robert Gordon, “persuade that the world described in its image and categories is the only attainable world.”³¹ As an example, Hendrik Hartog, in his seminal article, “Pigs and Positivism,”³² illustrates that despite a legal opinion to the contrary, unpenned pigs roamed antebellum New York

³⁰ Cott, “Marriage and Women’s Citizenship,” 1443.

³¹ Robert W. Gordon, “Critical Legal Histories,” *Stanford Law Review* 36 (January 1984) 109.

³² Hendrik Hartog, “Pigs and Positivism,” 1985 *Wis. L. Rev.* 899 (1985).

City by an assumed custom of pigkeepers. In another instance, Ariela Gross, in *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom*,³³ describes the agency of enslaved people in Southern courts despite the formal acceptance of slavery and prohibition against slave testimony.

These works complicate the depiction of legal stories and de-center the primacy of the typical federal appellate case. This dissertation differs from most legal history scholarship in that it is neither a regional study of an illuminating case nor is it a treatment of federal governance extrapolated out to the nation. Instead, it is a national study that is captured through an assemblage of state and local decisionmaking. I utilize both higher-level sources such as constitutional convention debates and low-level sources such as probate court records to describe the complex story of how disenfranchisement for people with mental disabilities was enacted and then operated on the ground. Low-level court cases are of particular importance. Losers of elections sued in an attempt to change the election result by flushing out lunatics and idiots who voted. Thus, small elections where a shift of a few people could completely change the result gained outsized significance for legal determinations of competence. While legal Mandarins attempted to create a hegemonic legal structure to disenfranchise lunatics and idiots, if we look to ordinary people's legal consciousness in these low-level disputes, we can see the fissures in this hegemonic structure.

³³ Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ: Princeton University Press, 2000).

Another influence for this dissertation is the work of critical legal theorists who examine racial classification cases, in particular, Ian Haney Lopez's *White by Law* and Ariela Gross's *What Blood Won't Tell*.³⁴ Both works examine what Haney Lopez calls "the *formal* legal construction of race – that is, the way in which law as a formal matter, either through legislation or adjudication, directly engages racial definitions."³⁵ Lopez looks at people who petitioned for naturalization on the basis that they were white. Thus, they

forced the courts into a case-by-case struggle to define who was a "white person." More importantly, the courts were required in these prerequisite cases to articulate rationales for the divisions they were creating. Beyond simply issuing declarations in favor of or against a particular applicant, the courts, as exponents of applicable law, had to explain the basis on which they drew the boundaries of Whiteness. The courts had to establish by law whether, for example, a petitioner's race was to be measured by skin color, facial features, national origin, language, culture, ancestry, the speculations of scientists, popular opinion, or some combination of these factors. Moreover, the courts also had to decide which of these or other factors would govern in the inevitable cases where the various indices of race contradicted one another. In short, the courts were responsible for deciding not only who was White, but also *why* someone was White. Thus, the courts had to wrestle in their decisions with the nature of race in general and of White racial identity in particular. Their categorical practices in deciding who was White by law provide the empirical basis for this book.³⁶

³⁴ Ian Haney Lopez, *White by Law: The Legal Construction of Race* (New York: NYU Press, 2006); Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America*. (Cambridge: Harvard University Press, 2008). See also Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America." *Journal of American History* 83 (June 1996): 44-69.

³⁵ Lopez, *White by Law*, xv.

³⁶ *Ibid.*, 1-2.

The law's engagement with the question of race implicates it in producing racial definitions and boundaries. As Lopez writes, "the prerequisite cases make clear that law does more than simply codify race in the limited set of cases merely giving legal definition to pre-existing social categories. Instead, legislatures and courts have served not only to fix the boundaries of race in the forms we recognize today, but also to define the content of racial identities and to specify their relative privilege or disadvantage in U.S. society."³⁷

Akin to Lopez's classification of race, Ariela Gross categorizes citizenship in formal and informal guises in her analysis of a series of cases of people petitioning for citizenship based on their racial identity. "Formal legal citizenship" was a prerequisite for "full social and political citizenship.... In the broad sense of participation in political and social life, only white people could become - and were seen as *capable* of becoming - citizens."³⁸ Despite a widespread view in the United States that race was:

'a matter of common sense,'³⁹ racial identification in the courts could be based, at different times, on appearance, ancestry, performance, reputation, associations, science, national citizenship, and cultural practice. In the middle decades of the nineteenth century, both the science and the performance of race became increasingly important to the determination of racial status. After the Civil War and Reconstruction, trials of racial identity continued to center on both medical expertise about race and community observation and retelling of racial

³⁷ Ibid., 7.

³⁸ Gross, *What Blood Won't Tell*, 8.

³⁹ Ibid., 9.

performances. This understanding of race as both a scientific fact of nature and something that we perform makes up our 'common sense' of race.⁴⁰

Both Gross and Haney Lopez emphasize the courts' use of common sense and scientific understandings of race – at least as long as scientists and laypeople agreed.⁴¹ When science diverged from common understandings, courts fell back upon “common sense” as a way to understand race.⁴²

I adopt some of Lopez's and Gross's insights about the “common sense” of race into my model of the “common sense” of disability. For instance, despite an assumption that they would “know it when they saw it,” courts frequently struggled with what type of evidence should be used to define insanity or idiocy. I use the term “common sense” in at least two different ways. First, lay community members utilized common sense as a method of classifying their neighbors, colleagues, and relatives as mentally disabled without the use of expert information or knowledge. Second, legislators and judges invoked common sense as a projection of lay community knowledge when designating particular voters as lunatics or idiots, also without the robust participation of experts. This second model called upon the first when making determinations, but in fact, the law flattened the nuanced distinctions that community members made when classifying their brethren.

⁴⁰Ibid., 9-10.

⁴¹ Lopez, *White by Law*, 3; Gross, *What Blood Won't Tell*, 9-10.

⁴² Ibid.

I also complicate the model of citizenship presented by Haney Lopez and Gross. According to Linda Kerber, in the United States, citizenship is an either/or proposition.⁴³ As Margot Canaday points out, “[i]n contrast to some European nations, there are no *formal* categories here of first and second-class citizenship. But the preoccupation of historians in recent years, including Kerber, has been to examine the ‘distinctions that were historically experienced;’ how, in Nancy Cott’s words, citizenship “can be delivered in different degrees of permanence or strength.”⁴⁴ While the formal citizenship of people with mental disabilities was not questioned, the denial of their political rights still required the state to create a rationale and taxonomy for its discrimination. Thus, my project illustrates the importance of historicizing what may be seen as a static ascriptive status⁴⁵ and shows how citizenship is both a matter of historical status *and* historical practice. The meaning and content of citizenship for people with mental disabilities did not remain stable over time. Moreover, the state was heavily involved in the production of their identity through defining their citizenship.⁴⁶ In this case, the state acts as both an administrative and membership

⁴³ Linda K. Kerber, “The Meaning of American Citizenship,” *Journal of American History* 94 (December 1997) 834, 837.

⁴⁴ Margot Canaday, *The Straight State: Sexuality and American Citizenship, 1900-1969*, Ph.D. Dissertation. University of Minnesota, 2004: 11-12 citing Linda K. Kerber, “The Meaning of American Citizenship,” *Journal of American History* 94 (December 1997) 834, 837; and Nancy F. Cott, “Marriage and Women’s Citizenship in the United States, 1830-1934,” *American Historical Review* 103 (December 1998) 1441.

⁴⁵ Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997); Rogers Smith, Will Kymlicka and Wayne Norma, “Return of the Citizen: A Survey of Recent Work on Citizenship Theory,” in *Theorizing Citizenship*, ed. Ronald Beiner (Albany: State University of New York, 1995): 283-322.

⁴⁶ Canaday, *The Straight State*, 3.

organization, one that, following Jacqueline Stevens, “both produces and regulates identity; setting, not only the prerogatives of participation...but the units of political membership in the first place.”⁴⁷ Finally, I depict how the truncated citizenship status of people with mental disabilities was used as a model for disenfranchising other stigmatized groups. In fact, people with mental disabilities flip the classic T.H. Marshall theory of citizenship on its head: while Marshall and others contend that political recognition precedes the conferral of socioeconomic benefits, in the realm of civil rights for disabled persons, receiving social welfare benefits often triggered disfranchisement.⁴⁸

Voting

Historians and legal scholars who focus on voting now note the rapidly shifting terrain of suffrage laws in the 19th century.⁴⁹ Alexander Keyssar, for example, who has

⁴⁷ Jacqueline Stevens, *Reproducing the State* (Princeton: Princeton University Press, 1999), 53-60.

⁴⁸ T.H. Marshall, “Citizenship and Social Class,” in *The Citizenship Debates: A Reader*, ed. Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), 93-112.

⁴⁹ Erik J. Engstrom and Samuel Kernell, “Manufactured Responsiveness: The Impact of State Electoral Laws on Unified Party Control of the Presidency and House of Representatives, 1840-1940,” *American Journal of Political Science* 49, no. 3 (2005): 531-549; Teri L. Caraway, “Inclusion and Democratization: Class, Gender, Race, and the Extension of Suffrage,” *Comparative Politics* 36, no. 4 (July 2004): 443-460; Richard Franklin Bense, *The American Ballot Box in the Mid-Nineteenth Century* (Cambridge: Cambridge University Press, 2004); Glenn Feldman, *The Disfranchisement Myth: Poor Whites and Suffrage Restriction in Alabama* (Athens: University of Georgia, 2004); Jeffery A. Jenkins, “Partisanship and Contested Election Cases in the House of Representatives, 1789-2002,” *Studies in American Political Development* 18 (Fall 2004): 112-35; Pamela S. Karlan, “Ballots and Bullets: The Exceptional History of the Right to Vote,” *University of Cincinnati Law Review* 71 (2003); Ronald F. King, “Counting the Votes: South Carolina’s Stolen Election of 1876,” *Journal of Interdisciplinary History* 32, no. 2 (2001): 169-191; Mark Lawrence Kornbluh, *Why Americans Stopped Voting: The Decline of Participatory Democracy and the Emergence of Modern Electoral Politics, 1880-1918* (New York: New York University Press, 2000); Scott C. James and Brian L. Lawson, “The Political Economy of Voting Rights Enforcement in America’s Gilded Age: Electoral College,”

written perhaps the most exhaustive modern treatment of American suffrage laws, rejects the earlier Whiggish view of voting rights, in which a small core of white men gained the franchise during the Revolutionary period, followed by a period of steady, gradual expansion of the franchise to encompass nearly all American adults.⁵⁰ He identifies periods of rapid enfranchisement as well as swift retrenchment due to social and economic conditions.⁵¹ Disenfranchisement based on mental competency, however, receives scant treatment in Keyssar's work.⁵² Not only does Keyssar not discuss the implementation of bars to suffrage based on mental competency, he also does not link the debates on the political capacity of blacks and women for suffrage to a larger question of the requirements of compulsory able-mindedness for full political citizenship.

American Political Science Review 93, no. 1 (1999): 115; Paul F. Bourke and Donald A. DeBats, "Identifiable Voting in Nineteenth-Century America: Toward A Comparison of Britain and the United States Before the Secret Ballot." *Perspectives in American History* 11 (1997): 257-288; Donald W. Rogers, ed., *Voting and the Spirit of American Democracy: Essays on the History of Voting and Voting Rights in America*. (Urbana: University of Illinois Press, 1992); Paul Kleppner, *Continuity and Change in Electoral Politics, 1893-1928* (New York: Greenwood Press, 1987); Walter Dean Burnham, "Those High Nineteenth-Century American Voting Turnouts: Fact or Fiction?" *Journal of Interdisciplinary History* 16, no. 4 (1986): 613-644; Peter H. Argersinger, "New Perspectives on Election Fraud in the Gilded Age." *Political Science Quarterly* 100 (1985-86): 669-87; Erik F. Petersen, "The Struggle for the Australian Ballot in California," *California Historical Quarterly* 51, no. 3 (1972): 227-243; Kirk H. Porter, *A History of Suffrage In the United States* (New York: AMS Press, 1971); Lionel E. Fredman, *The Australian Ballot: the Story of an American Reform* (East Lansing: Michigan State University Press, 1968); Chilton Williamson, *American Suffrage from Property to Democracy, 1760-1860* (Princeton: Princeton University Press, 1960).

⁵⁰ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000): xvi.

⁵¹ See, e.g., *Ibid.*, xxi, xxii, 54, 61.

⁵² *Ibid.*, xvi.

Though there has only been one recent comprehensive historical account of American suffrage, voting and political sovereignty has an outsized presence in American identity and politics.⁵³ Despite the fact that voting is often seen as the right “preservative of all rights,” American citizens do not possess an affirmative right to vote.⁵⁴ Indeed, since the Founding, an open question has been how the United States has balanced recognition of social stratification and fear of mob rule with political community and participation.⁵⁵

⁵³ Akhil Amar, *America's Constitution: A Biography* (New York: Random House, 2005); Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W.W. Norton & Co., 2005); Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004); Bruce Ackerman, *We the People: Volume 2: Transformations* (Cambridge, MA: Belknap Press of Harvard University Press, 2000); Michael Schudson, *The Good Citizen: A History of American Civic Life* (Cambridge: Harvard University Press, 1999); Akhil Amar, *The Bill of Rights: Creation and Reconstruction* (New York: Yale Univ. Press, 1998); Gershon Shafir, ed., *The Citizenship Debates: A Reader* (Minneapolis: University of Minnesota Press, 1998); Gordon Wood, *The Creation of the American Republic, 1776-1787* (University of North Carolina Press, 1998); Smith, *Civic Ideals*; Bruce Ackerman, *We the People, Volume 1: Foundations* (Cambridge, MA: Belknap Press of Harvard University Press, 1993); Rogers M. Smith, “Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America,” *American Political Science Review* 87, no. 3 (September 1993); Daniel T. Rogers, “Republicanism: The Career of a Concept,” *Journal of American History* (June 1992): 11-38; Carroll Smith-Rosenberg, “Dis-Covering the Subject of the ‘Great Constitutional Discussion:’ 1786-1789,” *Journal of American History* 79 (1992): 841-873; Edmund S. Morgan, *Inventing the People: the Rise of Popular Sovereignty In England And America* (New York: Norton, 1988); Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (New York: Yale University Press, 1986); John Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980); Alexander M. Bickel, *The Morality of Consent* (New Haven: Yale University Press, 1975); Robert A. Brent, “The Triumph of Jacksonian Democracy in the United States,” *Southern Quarterly* 7, no. 1 (1968): 43-57.

⁵⁴ Karlan, *Framing the Voting Rights Claim*, 919-23.

⁵⁵ Blumenthal, “Default Legal Person,” 1150-51; John Carson, *The Measure of Merit: Talents, Intelligence, and Inequality in the French and American Republics, 1750-1940* (Princeton: Princeton University Press, 2007); Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (University of North Carolina Press, 1999): 73-74; David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (University of North Carolina Press, 1997): 67-107; Gary J. Kornblith & John M. Murrin, “The Making and Unmaking of an American Ruling Class,” in *Beyond the American Revolution: Explorations in the History of American Radicalism* Alfred F. Young ed. (DeKalb, IL: Northern Illinois University Press, 1993): 27; Alan Taylor, “From Fathers to Friends of the People: Political Personas in the Early Republic.” 11 *Journal of the Early Republic* 465 (1991); Edmund S. Morgan, *Inventing*

My project examines voting in the 19th century, when voting underwent a sea change as it expanded from including propertied white men to almost all white men, with or without money or property. As states revised their constitutions after the American Revolution, the political consequences of perceived dependency changed dramatically. Requirements for voting shifted from economic demands to mental ones over the course of the 18th and 19th centuries. While before 1820 only 2 states listed suffrage exclusions based on mental status,⁵⁶ by 1880, 24 out of 38 Union states disenfranchised people because they were “idiots, insane, of unsound mind, or under guardianship,” and the last state to enact these provisions did so by 1945.⁵⁷ Thus, though these restrictions continue, their construction is a long 19th century story, one that this dissertation excavates.

Chapter Outline

The dissertation analyzes the construction, expansion, and maintenance of a formal legal system that disenfranchised people with mental disabilities. Though numerous works detail the struggle of groups such as women or black people to gain the franchise, few note the exclusion of people with mental disabilities. I develop a series of illuminating historical episodes that illustrate the contours, meanings, and

the People: The Rise of Popular Sovereignty in England and America (New York: Norton, 1988): 239-262; Wood, *Creation of the American Republic* (1969): 495-96.

⁵⁶ Kay Schriener and Lisa A. Ochs, “Creating the Disabled Citizen: How Massachusetts Disenfranchised People under Guardianship,” *Ohio State Law Journal* 62, no. 41 (2001): 489.

⁵⁷ Moses Daniel Naar, *The Law of Suffrage and Elections* (New York: Naar, Day & Naar, 1880): 11-72.

contradictions for my historical actors as they shaped, resisted, and deployed legal changes. My project emphasizes what Richard Benseel labels the “material practice of voting”⁵⁸ that traces the development of a patchwork of rules, regulations, and definitions in different localities and states.

Chapter 1

The opening chapter describes the implementation of bars to voting based on mental competency in state legislation or constitutional amendments and the development of a regime of compulsory able-mindedness for voting. This chapter tells the story of attempts to create a hegemonic structure that would disenfranchise anyone of presumed mental incompetency. This included white men classed as idiots and lunatics as well as women and African Americans, who were considered inherently mentally deficient.

These new prohibitions emerged against the backdrop of a revolution in thinking about lunacy and idiocy. Reformers created a new institutional structure for those considered mentally deficient in an effort to bring them back to competency. This new institutional structure, in turn, invented a new cohort of people considered dependent upon the state and thus ripe for disenfranchisement.

This chapter combines together two stories that have been previously considered

⁵⁸ Benseel, *American Ballot Box*, 8.

separately. While on the one hand, histories of psychiatry scholars have charted the rise of the asylum, the civil death of those housed within these new institutional structures has been presumed rather than analyzed. In turn, historians of democracy have discussed the dismantling of the property system for voting without addressing the lunatics and idiots left behind in the new structure of dependency and suffrage. At the center, then, is the creation of an outsider class of citizens who were the objects of an emerging welfare state and who were disenfranchised within the new model of democracy.

The end of the chapter moves away from formal legal doctrine and into the realm of social movements that created legal change. Reformers and activists alike used the language of mental deficiency as an argument for the denial of voting rights. Black people and women were described as mentally deficient by virtue of their membership in these particular groups. This exploration complicates the monochromatic accounts of the subsequent chapters, where white men were accorded some process within the court system and legislature to defend themselves against charges of incompetence, unlike women or black people who were wholesale disenfranchised because of their racial or gender status.

I examine how African Americans challenged views of their mental inferiority and thus their incapability for full political citizenship prior to the Civil War, during Reconstruction and Redemption, up until Jim Crow the implementation of maneuvers such as literacy tests. I also look at efforts by women suffragists to obtain the vote and

the arguments put forth by those who sought to retain the ban on women voting. The struggle for women's suffrage included arguments over the Reconstruction Amendments and culminated in the passage of the Nineteenth Amendment. Rhetoric by suffragists included attacks against people with mental disabilities as well as assertions that women as a group were not mentally incapable. Susan B. Anthony, for instance, asked whether women were "forever to be regarded as children or as lower than persons, along with criminals, idiots, and the insane."⁵⁹ In addition, a key dynamic of the campaign for the Nineteenth Amendment included differentiation from immigrants who were seen as mentally deficient.⁶⁰ This chapter maps out how rhetoric of mental deficiency was used to make suffrage claims by both groups and thus in turn suffrage activists also shaped the creation of the regime of compulsory ablemindedness for voting.

Chapter 2

Chapter 2 examines a consequence of the voting regime described in the first chapter. This chapter looks at the voting status of disabled Civil War soldiers living in

⁵⁹ Alma Lutz, *Susan B. Anthony: Rebel, Crusader, Humanitarian* (Boston: Beacon Press, 1959), 158.

⁶⁰ Douglas C. Baynton, "Defectives in the Land: Disability and American Immigration Policy, 1882-1924," *Journal of American Ethnic History* 24, no. 3 (2005): 31: "One of the driving forces behind early federal immigration law, beginning with the first major Immigration Act in 1882, was the exclusion of people with mental and physical defects (as well as those considered criminal or immoral, problems seen at the time as closely related to mental defect). Congressional legislation throughout this period repeatedly, and with ever increasing urgency, identified defective immigrants as a threat to the nation. The desire to keep out immigrants deemed defective was not a isolated development, but rather was one aspect of a trend toward the increasing segregation of disabled people into institutions and the sterilization of the "unfit" and "degenerate" under state eugenic laws."

soldiers' homes as a case study of how institutionalization in the new dependency regime led to disenfranchisement. Disabled Civil War soldiers were caught up in a structure that disenfranchised residents of charitable establishments such as lunatic asylums, despite efforts by veteran activists and their supporters to differentiate themselves as distinct institutions.

In a century that witnessed an explosion of institution-building, courts feared that these concentrated blocks of the impaired and infirm could alter political outcomes in the localities that chose to accept them. Thus, while communities reaped the financial benefits of institutions within their midst, the inhabitants of these institutions lacked any political voice among them. Courts echoed the fears of constitutional delegates that asylum residents could fall prey to vote loading and thus could sway local elections:

A different construction of the statutes would place it within the power of evilly disposed persons in border counties, just prior to our recurring elections, to load the registration lists with the names of nonresidents, who, armed with certificates of registration, would have an unimpeachable title to the ballot, with the result that the citizens of the state would be compelled to witness the corruption and prostration of the elective franchise without power of prevention or correction.⁶¹

The problem of the institution as a place without voting rights for its inhabitants is most notably flagged in the context of prisons and felon disenfranchisement.⁶² I

⁶¹ State ex rel. Lyle et. al. v. Willett et al., 97 S.W. 299, 305 (Tenn. 1906).

⁶² See, e.g., Katherine Irene Pettus, *Felony Disenfranchisement in America: Historical Origins, Institutional Racism, and Modern Consequences* (New York: LFB Scholarly Pub. LLC, 2005); Brian Pinaire, "Barred from the Vote: Public Attitudes toward the Disenfranchisement of Felons," *Fordham Urban Law Journal* 30 (2003): 1519-50; Jamie Fellner, Marc Mauer, Project Sentencing, and Helsinki Human Rights Watch, *Losing*

believe, though, that prison disenfranchisement arose as part of a larger trend where people in dependent relationships to an institution were disenfranchised under a “public welfare” ethos. While prisoners lost the right to vote as an expression of public disapproval, asylum residents were denied the franchise for more “benevolent” purposes. Moreover, while historians of psychiatry have detailed the consolidation of marginal people within institutions,⁶³ they have not discussed the impact of this consolidation upon political participation and the meaning of political community.

This chapter challenges the conventional wisdom that disabled veterans were valorized by society and rewarded by the government. Disabled Civil War veterans suffered from mental trauma that was unrecognized at the time as emanating from the war; this lack of recognition has continued as scholars have focused upon physical disabilities to the detriment of mental ones. Furthermore, scholars identify soldiers and veterans as a key community that spurred the development of public welfare and positive images of people with disabilities.⁶⁴ My research indicates, however, that local

the Vote: The Impact of Felony Disenfranchisement Laws in the United States, Felony Disenfranchisement Laws in the United States (Washington, DC: Sentencing Project: Human Rights Watch, 1998); Note, “The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and ‘The Purity of the Ballot Box,’” 102 *Harvard Law Review* (April 1989): 1300-1317.

⁶³ Blumenthal, “Default Legal Person,” 1193; Dain, *Concepts of Insanity*, 125-26; Dwyer, *Homes for the Mad*, 86.

⁶⁴ Daniel Blackie, “Disabled Revolutionary War Veterans and the Construction of Disability in the Early United States: 1776-1840,” Ph.D. Dissertation, University of Helsinki, 2010; Michael Waterstone, “Returning Veterans and Disability Law, 85 *Notre Dame Law Review* 1081 (2009-2010); Fred Previts, “The Voting Process.” *Timeline* 26, no. 4 (2009): 50-51; Jennifer Ruth Horner, *Blood and Ballots: Military Voting and Political Communication in the Union Army during the United States Civil War, 1861-1865* Ph.D. Dissertation, University of Pennsylvania, 2007; Florence Wagman Roisman, “National Ingratitude: The Egregious Deficiencies of the United States’ Housing Programs for Veterans and the Public Scandal of Veterans’ Homelessness,” 38 *Indiana Law Review* 103 (2005); Larry M. Logue and Peter Blanck, “There Is Nothing That Promotes Longevity Like a Pension: Disability Policy and Mortality of Civil War Union

communities feared that the residents of soldiers' homes would vote as a bloc and overwhelm non-residents in political decision-making. Thus, in fact, the benefits that the veterans received were precisely what triggered their disenfranchisement.

Chapter 3

Chapter 3 examines the congressional contested election hearings that arose after the mental competency bars analyzed in Chapter 1 were written into law. Although

Army Veterans," 39 *Wake Forest Law Review* 49 (2004); Jonathan W. White, "Canvassing the Troops: The Federal Government and the Soldiers' Right to Vote," *Civil War History* 50, no. 3 (2004): 291-317; David A. Gerber, "Disabled Veterans, the State, and the Experience of Disability in Western Societies, 1914-1950," *Journal of Social History* 36 (2003): 899-916; Peter Blanck and Chen Song, "Civil War Pension Attorneys and Disability Politics," 35 *University of Michigan Journal of Law Reform* 137 (2001-2002); Peter Blanck, "Civil War Pensions and Disability," 62 *Ohio State Law Journal* 109 (2001); Peter Blanck, "Introduction to Conceptions of Disability in War and Society," 11 *Transnational Law & Contemporary Problems* (2001): xi; Ben Shephard, *A War of Nerves: Soldiers and Psychiatrists in the Twentieth Century* (Cambridge: Harvard University Press, 2001); Robert I. Goler and Michael G. Rhode, "From Individual Trauma to National Policy: Tracking the Uses of Civil War Veteran Medical Records," in Gerber, ed. *Disabled Veterans in History*, 163-184; James Marten, "Nomads in Blue: Disabled Veterans and Alcohol at the National Home," in David Gerber, ed. *Disabled Veterans*: 275-294; David A. Gerber, "Introduction: Finding Disabled Veterans in History," in David Gerber, ed. *Disabled Veterans in History* (Ann Arbor: University of Michigan Press, 2000): 1-51; David A. Gerber, ed. *Disabled Veterans in History* (Ann Arbor: University of Michigan Press, 2000); John P. Resch, *Suffering Soldiers: Revolutionary War Veterans, Moral Sentiment, and Political Culture in the Early Republic* (Amherst: University of Massachusetts Press, 1999); David A. Gerber, "Memory of Enlightenment: Accounting for Egalitarian Politics of the Blinded Veteran's Association," *Disability Studies Quarterly* 18 (1998): 258-263; Patrick J. Kelly, *Creating a National Home: Building the Veterans' Welfare State, 1860-1900* (Cambridge, MA: Harvard University Press, 1997); Harold D. Langley, *A History of Medicine in the Early U.S. Navy* (Baltimore: Johns Hopkins University Press, 1995); Theda Skocpol, *Protecting Soldiers and Mothers: Political Origins of Social Policy in the United States* (Cambridge, MA: Harvard University Press, 1992); Cassius Marcellus Bush, "A Union Soldier Votes in Franklin County," *Franklin County Historical Review* 20, no. 1 (1989): 20-23; R. Severo and L. Milford, *The Wages of War: When America's Soldiers Came Home - From Valley Forge to Vietnam* (New York: Simon & Schuster, 1989); John P. Resch, "Politics and Public Culture: The Revolutionary War Pension Act of 1818," *Journal of the Early Republic* 8 (1988): 139-158; John P. Resch, "The Continentals of Peterborough, New Hampshire: Pension Records as a Source for Local History," *Prologue* 16 (1984): 169-183; John P. Resch, "Federal Welfare for Revolutionary War Veterans," *Social Service Review* 56 (1982): 171-195; R. H. Kohn, "The Social History of the American Soldier," *American Historical Review* 86 (1981): 553-567; Daniel J. Kevles, "Testing the Army's Intelligence: Psychologists and the Military in World War I," *Journal of American History* 55 (December 1968): 565-581.

states wrote the disenfranchisement of people with mental impairments into their constitutions and statute books, they failed to include procedures for determining mental status. Delegate Aldrich, of Massachusetts, noted that “[d]etermining precisely which criminals had been restored to the right of suffrage was not an easy task,” and “it will often be found equally difficult to ascertain who are insane persons, paupers, or idiots; and yet these several classes of persons are usually excluded.”⁶⁵ He concluded, though, “[b]ut all this furnishes no reason why an idiot should be allowed the important and responsible right of suffrage. Nor should insane persons be permitted to exercise this right, [simply] because it is not always easy to ascertain whether a person be of a sane or insane mind.”⁶⁶ Delegate Hathaway proposed that a court make a determination of idiocy or insanity based on guardianship status prior to election day, as he did not want to leave the decision in the hands of election officials:

[T]he Committee had reported that 'insane persons' should not vote, and the reason why I wished to substitute for that 'persons under guardianship' was, because I would not deprive any person of the right to vote upon the judgment of the selectmen, and because they might believe a person to be idiotic or insane who was not so, and the only evidence that they should consider as sufficient to deprive any voter of his rights was a solemn adjudication, by a competent tribunal of law or probate, that the person was so, and that he was incompetent to vote.⁶⁷

Massachusetts, like other states, however, did not follow Hathaway’s recommendation and left the procedure for determining mental impairment unrecorded.

⁶⁵ *Official Report of the Debates and Proceedings...Massachusetts*, 291.

⁶⁶ *Ibid.*, 295.

⁶⁷ *Ibid.*, 291.

Thus, while Chapter 1 details the hegemonic structure that disenfranchised lunatics and idiots, Chapter 3 analyzes how this structure played out at the local level. If we looked just at elite discourse, such as the state constitutional convention delegates, what we might expect is that election officials would enforce the law – that is, they would not permit lunatics and idiots to vote. This chapter reveals that this was easier said than done. Ordinary people had a more nuanced appreciation of mental status than the law, as people operated upon a gradient of mental functioning and classification. These hearings illustrate that defining disability was a community project, involving everyday encounters subject to continuous revision and contextualization. While medical understanding played a part, just as important were the opinions of lay people who formed vernacular understandings of disability.

These hearings are a useful lens to reveal how ordinary people made sense of the legal definitions established by the state to disenfranchise. Many were reluctant to disenfranchise their neighbors and family members even if they considered them mentally deficient. In fact, in many instances, they facilitated their access to the polls. The "common sense" of the law sometimes clashed with the "common sense" of the community, even when the law presumed community norms as a method of determination and resolution.

Chapter 4

Chapter 4 analyzes the jurisprudence developed through contested election cases. As elections became more fraught and litigious, people with alleged mental disabilities were caught in election challenges as political parties harnessed constitutional prohibitions against lunatics and idiots voting to raise post-election litigation in courts. Though judges struggled to make sense of legal and medical definitions of insanity and idiocy, these prohibitions persisted.

Treatises on idiocy and insanity as well as those covering election law echoed the constitutional delegates in Chapter 1 in noting the disenfranchisement of people of mental impairments without indicating the procedure for disenfranchisement. Thomas Cooley's *Constitutional Limitations* bluntly stated "that idiots and lunatics are by the common political law of England and this country disqualified from voting."⁶⁸ George Washington McCrary's *A Treatise on the American Law of Elections* argued that

The vote of an idiot or person *non compos mentis* ought not to be received; and if such a person has voted, his vote may be rejected upon a contest, without a finding of lunacy. In the unfortunate event that a vote was challenged on the basis of *non compos mentis*, it is necessary to establish satisfactorily, by competent evidence, the alleged want of intelligence, and the test would probably be about the same as in cases where the validity of a will is attacked on the ground that the testator was not of sound mind when it was executed. If the voter knew enough to understand the nature of his act – if he understood what he was doing – that is probably sufficient.⁶⁹

Francis James Newton Rogers in *On Elections*, opted for an on-the-spot

⁶⁸ Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* (Little, Brown, and Company, 1908): 599.

⁶⁹ *Ibid.*, 47-48.

assessment of lucidity: “With regard to a lunatic who, though for the most part he may have lost the sound exercise of his reason, yet sometimes has lucid intervals, it seems that the returning officer has only to decide whether at that moment of voting the elector is sufficiently *compos mentis* to discriminate between the candidates and to answer the questions, and take the oath, if required, in an intelligible manner.”⁷⁰ E. Chandos Leigh complicated the matter by observing that “A lunatic is incapable of voting, *except*, it has been said, during a lucid interval.”⁷¹

When judges took up the issue of whether people with alleged mental ailments could vote, they struggled to determine how to assess claims using the methods identified by constitutional delegates. These cases directly addressed the question of classification and definition of insanity or idiocy with challenges to individual voters’ mental status. Courts used community, family, employer, and neighbor testimony along with legal precedent, practices in other states, medical and legal treatises, and expert testimony to improvise an ad hoc system of discerning idiocy or lunacy without providing robust guidelines for other courts to follow.

One point of emphasis in this chapter is the examination of changes in voting in the wake of Progressive era reform. The Progressive era was a time of pessimism on the part of reformers who felt that the purity of the electoral process was under siege by lax

⁷⁰ Francis James Newman Rogers and Charles Willoughby Williams, *Rogers on Elections*. 10th ed. (Stevens and Sons, Lmtl., 1895); 53.

⁷¹ E. Chandos Leigh, *A Guide to Election Law and the Practice of Election Petitions* (Davis and Son, 1874): 134. Added emphasis.

election process and also by the disreputable people who voted. As a result, voting underwent an administrative revolution that also acted as a mechanism to push people who struggled with voting under these new rules out of the franchise. At the same time, psychiatry was having its own internal struggle as factions fought for control and judges were increasingly disillusioned with psychiatric expert witnesses. This chapter shows how physical and mental disabilities were differentiated as the former was developed as in need of help and access and the latter as deserving of disenfranchisement. It also reveals that though courts were relatively laissez-faire with their decisions on electoral process, they were quite strict with designating certain people as undeserving of the vote.

Though constitutions and statutes usually did not make a distinction on voting status based on age, it was an important factor in deciding whether people were mentally disabled in practice.⁷² Judges were reluctant to disenfranchise the elderly, even with evidence that they were “enfeebled” by age.⁷³ Additionally, while states disfranchised people with mental disabilities, they often wrote in exemptions to allow assistance for people with physical disabilities. These two types of exemptions raise interesting questions of how disability was defined and how the legal and political systems weighed voter intent.

⁷² There is strong evidence that this is the case now as well.

⁷³ For evidence indicating the same trend in contracts for care, see Blumenthal, “Default Legal Person,” 1234-35; Hendrik Hartog, “Someday All This Will Be Yours: Inheritance, Adoption, and Obligation in Capitalist America,” 79 *Indiana Law Journal* 345 (2004).

Finally, the dissertation concludes where it began – with the disenfranchisement of people with mental disabilities in the present. Despite statutory provisions such as the Americans with Disabilities Act and the Voting Rights Act, and political movements such as the disability rights movement, voting bans for people with mental disabilities have remained largely unchanged.

CHAPTER 1 – SYMPATHY AND STATISTICS: THE CREATION OF A DEPENDENT, DISENFRANCHISED CLASS

In Lincoln, she found a woman in a cage. In Medford, “one idiotic subject chained, and one in a close stall for seventeen years.” In Newburyport, “an insane man, not considered incurable, in an out-building, whose room opened upon what was called ‘the dead room,’ affording, in lieu of companionship of the living, a contemplation of corpses.” All of these people, and more, Dorothea Dix described to the residents and legislators of the state of Massachusetts in her 1843 “Memorial to the Legislature of Massachusetts.” Dix’s campaign for the improved treatment of insane and idiotic people began two years earlier, in 1841. As a Sunday school teacher in the Cambridge, Massachusetts jail, she discovered insane and idiotic people in abysmal conditions. Dix traveled throughout Massachusetts, Rhode Island, New Jersey, Pennsylvania, Illinois, Missouri, Indiana, and Ohio, documenting appalling circumstances for insane and idiotic people lodged in prisons, poorhouses, and almshouses. She lobbied for commitment and specialized treatment in state-supported asylums.¹

Ten years later, Massachusetts Constitutional Convention Delegate Benjamin Franklin Hallett argued for the disenfranchisement of the same group of people that Dix

¹ Dorothea Dix, Memorial to the Legislature of Massachusetts (1843).

had discovered, telling his brethren that “[i]diots and insane, and those excluded from society by infamous crimes, are manifestly not a part of the acting society, and can make no contract.” His fellow delegate Rufus Choate agreed, noting “you have to require capacity also; intelligence, free will, physical, and other qualifications. These all do not possess....the insane want discretion; the pauper, and the person under guardianship, wants free will....All do not possess the indispensable qualification to vote.” Delegate Whiting Griswold chimed in, observing: “by the common consent of mankind women, minors, idiots, insane and perhaps paupers or persons under guardianship, are excluded from any active participation in the formation or administration of government.”¹

Why were lunatics and idiots the subject of intense discussion by government officials and reformers alike? These conversations marked key turning points in the development of the U.S. welfare and political states. Dix’s campaign, with its portraits of pathetic, helpless, and sympathetic people with mental ailments, appeared just as antebellum reformers and doctors, spurred by developments abroad, created a new treatment system for people with mental disabilities. Long considered incurable unfortunates struck by religious afflictions, now lunatics and idiots had the possibility

¹ Official Report of the Debates and Proceedings in the State Convention to Revise and Amend the Constitution of the Commonwealth of Massachusetts [1853], 3 vols. (Boston: White & Potter, 1853). [Hereinafter Massachusetts Constitutional Convention]

of a cure in asylums overseen by superintendents trained in moral treatment.

Benevolent reformers also spurred the movement of lunatics and idiots from jails and poorhouses into these new asylums. Thus, lunatics and idiots became a distinct visible, named, and defined social problem, albeit one with a compelling, pathetic face.

At the same time that lunatics and idiots caught the attention of social reformers, they also received scrutiny from political actors. As states revised their constitutions after the American Revolution, state constitutional convention delegates advanced a model of political citizenship based on the interlocking qualities of independence, moral virtue, and mental capacity. Citizens needed to demonstrate an adequate level of each these elements in order to qualify as voters. Lunatics and idiots did not pass muster.

This chapter describes the establishment of a sociopolitical regime that disenfranchised lunatics and idiots as the culmination of a process that constructed them both as a social reform problem and as the emblematic dependent quasi-citizen. This story is embedded within the marriage of two narratives that have been often discussed and debated separately – the rise of the asylum and institutionalized care and the development and extension of democracy. These histories highlight the imperatives of social control and benevolent treatment, the development of ideas about the poor as undeserving recipients of social welfare, and the rise of democracy for ordinary white men. This chapter focuses on what has been less apparent: the installation of suffrage prohibitions for lunatics and idiots, and the differentiation of deserving and undeserving poor people through the rubric of disability. This development occurred

because of a new social and political phenomenon – the institutionalized disfranchised dependent, or in the terms of the time, the pauper.

What did contemporaries mean by this term? It covered a wide array of people, ranging from those caught by circumstance in extreme poverty, to those physically unable to labor, to those with mental impairments that prevented them from working. Whatever their situation, they were considered dependent, in that they relied wholly or in part upon others – often in the form of state or private charity – for their sustenance. Though pauperism had a negative connotation to antebellum ears, during this time period, social reformers were busy reshaping the classification and evaluation of paupers. Social reformers conducted surveys, distributed reports, lobbied legislators, and published newspaper articles highlighting the lamentable lack of differentiation among paupers. As a solution, they created a set of institutions tailored to cure different types of ailments. These institutions grew from poorhouses filled with an undifferentiated mass of dependent people. Reformers distinguished between paupers who were able-bodied and those who had ailments such as lunacy. The former did not contribute to the social contract through paid work, they lacked virtue, and they were unacceptably dependent upon public welfare for their well-being. In contrast to poor or middling white men, who scraped a meager living through paid work, and despite the apparent abundant opportunities for economic success, paupers lacked the character to leave the almshouse or the dole and become independent men. Non-able-minded paupers required specialized treatment in an asylum. Once a lunatic or idiot received

that treatment, reformers and asylum superintendents assured legislatures and the public that they were quite likely to be cured, and thus transformed into productive members of society. Thus, their exile from political citizenship and the vote was intended as a temporary purgatory, though while in an institution their civil death was presumed. Once restored to health through the benevolence of public institutions created and maintained by able-minded taxpayers, they could become full-fledged members of the political community again. By separating out insane and idiotic paupers from their able-bodied brethren, reformers differentiated those public welfare recipients who deserved kindness and treatment from those worthy of scorn. Both were disfranchised, though for different reasons and ostensibly for different periods of time. While institutionalized, insane paupers were doubly disfranchised due to their mental state as well as their pauper status.

Origins: English precedent and colonial foundations

U.S. colonists adopted a social and political system from England that made local governments responsible for poor people, combined with the development of increasingly specific categories of people who received government attention and treatment. England first codified support for the poor in the fourteenth century. The Poor Law of 1388 required poor people to work in order to receive aid. Local officials were charged with the responsibility to assess the work status of poor people. Able-bodied poor who refused to work could be publicly branded or incarcerated. Both

adults' and children's labor could be sold to the highest bidder. In 1531, Parliament granted licenses for the "aged and impotent poor" to beg in particular areas. When the Poor Law was amended in 1601, the poor were divided into 3 categories: The first, the "helpless" poor, were dispensed to the poorhouse. The able-bodied poor were given jobs in the workhouse. The third group, the intransigent poor, composed of idlers, vagabonds, and "sturdy beggars," was confined in the house of correction. Thus, the distinguishing feature of the law was the differentiation among the poor based on their ability and willingness to work, with support for those unable to work and punishment for the unwilling. The poorhouse was filled with the non-able-minded and able-bodied, while the workhouse and houses of correction housed the able-minded and bodied. These institutions at the outset, then, were defined by degrees of non-able-bodiedness and able-mindedness.²

Though early U.S. culture stigmatized the poor, American elites also lamented the toxicity of European class conflict and applauded the relatively more egalitarian ethos of the colonies. James Madison argued that a key responsibility of the government was "to provide employment for the poor, and support for the indigent." Colonists resented, however, that English Poor Law officials regularly transferred poor people and criminals to colonies. Although colonies provided support for the local poor, they also took pains to distinguish poor vagrants. Those that were not considered residents

² Walter I. Trattner, *From Poor Law to Welfare State: A History of Social Welfare* (6th ed. 1999), 25. Raymond A. Mohl, *Poverty in New York City* (Oxford University Press, 1971), 3, 38. Kay Schriener and Lisa A. Ochs. "Creating the Disabled Citizen: How Massachusetts Disenfranchised People under Guardianship." *Ohio State Law Journal* 62, no. 41 (2001), 503. Deborah A. Stone, *The Disabled State*. (London: Macmillan, 1985), 36.

were “warned out” -- that is, actively discouraged from settling and encouraged to move. Additionally, some towns required that new people ask permission to settle. These laws were intended to discourage costly undesirables from settling in towns. For instance, Abigail Gifford, a widow who John Winthrop described as a “somewhat distracted and very burdensome woman” was not allowed to remain in Massachusetts Bay Colony and had to return to her ship for deportation.³

A significant problem of such laws was the tremendous expense involved in litigating cases and removing troublesome non-residents. According to Michael Katz, “Towns often spent more money ridding themselves of paupers than they would have spent supporting them. Aside from the trouble and expense of endless litigation, the system often was cruel, for old and sick paupers frequently were shipped from town to town, even in the middle of the winter.” Initial efforts at reform blunted the harshness of poor laws for those considered unable to support themselves. In 1676, for example, Massachusetts town selectmen were held responsible for the care of idiots and “distracted” persons within their communities. In 1678, the Massachusetts legislature ordered towns to provide support for “unruly Distracted persons” so that they did not “Damnifie others.” The towns could draw from the estates of these people for their financial support, order the person to work, or else support the person as a public charge. 1694 saw the passage of the “Act for the Relief of Idiots and Distracted Persons.”

³ Gerald Grob, *The State and the Mentally Ill; A History of Worcester State Hospital in Massachusetts, 1830-1920*. (Chapel Hill, University of North Carolina Press, 1966), 5. Tratner, *From Poor Law to Welfare State*, 25.

The Act held that justices of the peace would protect idiotic and insane people's property. The idiots and insane people themselves were put in the custody of selectmen or overseers of the poor. In 1736, judges, town selectmen, and overseers of the poor determined insanity judgments. Before the American Revolution, 10 out of the 13 colonies provided some public support for the insane within their midst; this funding emerged out of a general system for poor support. Thus, when we see people with mental disabilities in the historical record during this time, they are contained within the general category of pauperism. Going forward, they become increasingly differentiated, treated and restricted as a distinct social group.⁴

Aside from poor support, the insane rarely received treatment in the 1600s and 1700s. The medical profession was in its infancy; more fundamentally, doctors, like the majority of the public, felt that insanity could not be effectively treated. As Charles Lawrence, a historian of Philadelphia almshouses, remarked in 1808, doctors rarely visited the insane institutionalized in asylums: "They appeared to think that insanity was incurable, and even the mildest cases were in cages like wild beasts." The public – and the law – considered insanity a permanent religious affliction.⁵

⁴ Michael Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America*, (New York: Basic Books, 1996), 21-22, citing Yates Report, p. 967 and 952; Elizabeth Wisner, *Social Welfare in the South: From Colonial Times to World War I* (Baton Rouge, LA: Louisiana State University Press, 1979), 32-33. Tratner, *From Poor Law to Welfare State*, 25.

⁵ Charles Lawrence, *History of the Philadelphia Almshouses and Hospitals from the Beginning of the Eighteenth to the Ending of the Nineteenth Centuries* (1905), 57. Daniel Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674-1860* (Boston: University of Massachusetts Press, 2006); David D. Hall, *Worlds of Wonder, Days of Judgment: Popular Religious Belief in Early New England* (Cambridge: Harvard University Press, 1990).

Doctors were equally vague on the physical manifestations of mental illness. Most doctors believed in the somatic theory of insanity, where the mind, or the physical manifestation of the soul, was separate from the brain. Although they did not know the direct relationship between the mind and the brain, they believed that insanity struck the brain only, leaving lesions. The mind itself was divided into three faculties: reason, feeling, and will. For the ordinary person, reason mastered the feeling and the will. Though mental illness did not physically affect the mind, one was insane when irrational and violent emotions overtook reason. Doctors cured mental illness based on a “theory of crisis” where they induced physical crises, such as bleeding and purging, so that the body could expel the harmful substances causing illness. Milder treatments included “work, travel, diet, pleasant living conditions, cold shower baths, threats of bad punishment, or sudden immersion into a pool of water.” Idiots, or those who were considered to be absent of reason, received even less attention than lunatics and were often undifferentiated. When distinguished from them, it was to highlight the incurability of idiocy.⁶

So, the insane were not the problem of doctors, nor were they the problem of the state; they were considered the problem of local communities. Local governments were responsible for the insane if private welfare was lacking; they determined sanity in probate cases; and they protected their constituencies against people “who represented a clear and distinct threat to society.” For the state, the insane were merely a nuisance,

⁶ Norman Dain, *Concepts of Insanity In the United States, 1789-1865* (New Brunswick, N.J.: Rutgers University Press, 1964), 10.

not people suffering from a particular ailment; thus, when violent they were confined along with the poor and the criminal in relatively undifferentiated and crude almshouses or jails. Since people lived relatively far apart from each other, it was uncommon that an insane person threatened a neighbor or a stranger and in general, communities rarely initiated formal action against the insane unless they were violent. Management of the insane was considered a family matter, especially for the wealthy. For the relatives of insane persons, prevailing views on insanity provided a strong reason to keep problematic relatives hidden.⁷

Origins: Voting and Revolution

American colonial elites echoed their English brethren in both their rhetoric and their governmental structure not only in terms of the complexities of mental disability, but also with respect to the related questions surrounding voting and citizenship. By the 1750s, 12 American colonies had adopted property qualifications for suffrage. Such qualifications were everywhere linked to the idea of independence – and its opposite, the “dependency” that was thought to compromise a vote. John Adams, for example, argued that minors and poor people should not be allowed to vote because they lacked a will of their own. James Wilson, a famous Pennsylvania lawyer, contended that citizens “whose circumstances do not render him necessarily dependent on the will of another” should be the only ones granted the suffrage. Josiah Quincy, the first mayor of

⁷ Gerald Grob, *The Mad Among Us: A History of the Care of America’s Mentally Ill* (New York: Free Press, 2011), 5-7.

Boston, proposed in the Massachusetts Constitutional Convention of 1820, that only non-dependent citizens should be able to vote.⁸

The idea that property qualifications defined independence – and thus served as a reliable index for restraining voting – unraveled quickly after the American Revolution. As the country urbanized, independence remained a priority for voting, but requirements changed from the owning of property to the paying of taxes. Later, even taxpaying would be dropped from the requirements. Between 1810 and the 1830s political parties campaigned on ending property requirements. The ideological basis of the Revolution -- no governance without representation -- made it hard to withhold the vote from the men who had fought against the English. And yet the idea of political equality – thoroughly knit into the fabric of early American governance – rested uneasily next to other views, also deeply held, about “natural” differences in mental ability, talents, and virtue among men.⁹

⁸ Robert J. Steinfeld, "Property and Suffrage in the Early American Republic." *Stanford Law Review* 41, no. 35 (1989), 337. C. F. Adams, (ed.), *The Works of John Adams* (Boston, 1851-60), vol. IX, pp. 375-378.

J.D. Andrews (ed.), *The Works of James Wilson* (Chicago, 1896), vol. I, p. 16, cited in Chilton Williamson. Massachusetts Constitutional Convention.

⁹ Alexander Keyssar notes the factors that drove the expansion of the franchise from taxpayer qualifications to restrictions based on status and behavior. Further urbanization and commercialization and the disappearance of agriculture caused a rise in the number of white men who could not fulfill either tax or property requirements.⁹ Especially in the South, states wanted poor whites invested in the polity so that they would serve in militia patrols.⁹ New states competed for new members. Political parties lobbied for new members to swell their ranks.⁹ The promise of the franchise proved compelling in every case. Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York, Basic Books, 2009), 38-39. Donald W. Rogers (ed.), *Voting and the Spirit of American Democracy: Essays on the History of Voting and Voting Rights in America* (Urbana: University of Illinois Press, 1992), 9-10. John Carson, *The Measure of Merit: Talents, Intelligence, and Inequality in the French and American Republics, 1750-1940*, (Princeton: Princeton University Press, 2006).

Though property restrictions receded, suffrage reformers still kept in place the importance of independence for voters. At the same time that voting expansion brought white men of varying talents and economic circumstances together in an uneasy sort of political equality, white male elites sought to maintain and reinforce restrictions on the suffrage against those considered undesirable – and dependent – such as women and African Americans. One can see during this period the emergence of different forms and structures of dependency: the woman dependent on the husband or the patriarch; the slave dependent on the master; the poor dependent on the state. It was during this time, the first half of the nineteenth century, that states began to disfranchise those considered mentally unqualified to vote, for they too had their own structures of dependency. States eliminated all property requirements for voting by 1856. Starting with Maine in 1819, states enacted voting requirements that incorporated a new language of deservedness based on economic status or mental capacity. Thus, dependency as a barrier to voting did not end with the era of property requirements, it merely changed form.

The Transformation of Insanity

The nineteenth century marked rapid and fundamental shifts in the treatment of the insane. American doctors reshaped and redefined European insights into the mind and created a profession centered on benevolent, paternalistic, non-punitive treatment, coined “moral treatment” by French physician Philippe Pinel. He published his data

collection of case studies, *Traité médico-philosophique sur l'aliénation mentale, ou la manie*, in 1801. Translated as *A Treatise on Insanity* in 1806, Pinel's observations galvanized treatment in the United States. Benjamin Rush, a prominent Pennsylvanian, authored the first American textbook on mental diseases, *Medical Inquiries and Observations upon the Diseases of the Mind*, in 1812. Samuel Tuke's publication of the *Description of the Retreat: An Institution Near York for Insane Persons of the Society of Friends*, published in England in 1813, spread a similar message through Quaker networks, leading to a prominent Quaker asylum in Philadelphia. Historian Norman Dain wrote:

Pinel thought moral treatment appealed to the moral sense through setting an example and teaching the patient to return good for good. Under the new system, cruel punishments and almost all "shock" treatments were forbidden....The administration of purgatives, emetics, and other drugs, and the widespread practice of bleeding insane patients were frowned upon...and had virtually no place in [his] system.

Significantly, the setting for treatment was a crucial component. Treatment necessitated the removal of lunatics from the influences – especially family – that caused their mental illness and required their placement in the care of a benevolent superintendent within an asylum until cured.¹⁰

¹⁰ William Tuke founded the Retreat at York in 1792. He argued that lunatic patients were capable of being rational, if treated correctly. The publication of Samuel Tuke's *Description of the Retreat at York* was a strong influence in the development of Quaker mental hospitals in the United States. Gerald Grob estimates that "half of the mental hospitals established in the United States prior to 1824 drew heavily upon the experiences of the Quakers," including Friends' Asylum in Pennsylvania, founded in 1813, and Bloomingdale Asylum in New York, in 1821. Gerald Grob, *The State and Mentally Ill: A History of Worcester Hospital in Massachusetts, 1830-1920*, (Chapel Hill: University of North Carolina Press, 1966), 11-12. Dain, *Concepts of Insanity*, 13.

A new form of institutionalization thus proved key to the new model of mental illness. When reformers in the United States brought the plight of lunatics and idiots to the attention of the broader community in the antebellum era, primarily they found these unfortunates in poorhouses and almshouses, local state institutions concerned with segregation and correction. They were paupers first and lunatics second. The first wave of lunatic institution building in the late 1700s and early 1800s stalled due to a lack of state funding and paying patients. Localities had transitioned to indoor relief, or poorhouses and almshouses, in the early 19th century as a way to discourage poor people from seeking state support. Paupers were an increasingly worrisome social problem in the early 1800s. The New York census of 1825, for instance, recorded 819 insane people throughout the state. Of these, 263 paid for support in an institution, 208 were in jail or supported by charity, and 348 were insane paupers. Though there were some private northeastern asylums – the Friends’ Asylum outside Philadelphia, founded in 1817, Massachusetts’s McLean Asylum, opened in 1819, New York’s Bloomingdale Asylum, founded in 1821, and the Hartford Retreat in Connecticut, started in 1824 as well as public asylums in Kentucky and Virginia, state and local governments did not truly begin to treat lunatics in specialized institutions until the 1830s.

These institutions were also intended to save counties money by reducing settlement litigation and distributing their financial burdens. According to the Quincy Report, an influential Massachusetts report on poverty published in 1820, “all the towns

that had already built a poorhouse ‘without exception claimed a reduction in their expenses.” These new institutions were not just cost-saving devices, however.

Reformers were optimistic that institutions would also provide avenues for reform and rehabilitation by removing troublesome people from the environmental contexts that encouraged their problematic behavior. In poorhouses, for instance, poor people would learn how to work in an alcohol-free environment.¹¹

In particular, people with disabilities suffered under the new regime of indoor relief. Not only were they the most expensive residents of poorhouses, but they were also the least likely to get hired out for day labor or to leave the institution. Almshouse supervisors recognized that they supervised a mixed population and they were not necessarily the best resource for people with mental ailments. The 1795 report from the New York City Almshouse exposed an institution full of blind, lunatic, and aged

¹¹ Public poor relief dissertation, 275. Norman Dain, *Disordered Minds: The First Century of Eastern State Hospital in Williamsburg, Va., 1766-1866* (Charlottesville, VA: University of Virginia Press, 1971), 38. Michael Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York: Basic Books, 1996), 3. Mary Ellen Henry challenges Michael Katz’s argument that “the citizenry were supposed to fear the poorhouse so that they would have incentive to maintain their jobs and thus ‘sustain the nineteenth century work ethic.’” The poor used the poorhouse strategically as shown in Elna Green’s account of Richmond and Michael Katz’s account of Erie County, Pennsylvania. For example, they would use it as a lying-in hospital, for refuge from the cold, or as a hospice of the aging poor. Mary Ellen Henry notes that the Alexandria Workhouse, in Virginia, “served many different functions: as hospital, as hospice, as long term caregiver for the insane or feeble-minded, and as a workhouse to which the able-bodied poor were remanded to be usefully employed, contributors to the community life.” “In the 1850s, Charleston’s elite underwrote the development of an extensive welfare system including a new poorhouse, renovation of the old building for its black population, and ongoing support for the Orphan Asylum.” *Shadow of the Poorhouse*, 9. Quincy Report, 8. Reformers often argued that intemperance was a key factor that drove poverty. In the late 1820s, the New York City Temperance Society argues that $\frac{3}{4}$ of the poor were in poverty because of “strong drink.” Poverty in New York City, 215 The New York Citizens Relief Commission investigated pauperism in 1817 and petitioned the legislature to enact liquor licensing reforms. Mohl, *Poverty in New York City*, 244.

paupers. Dr. John Gorham, a doctor at the Boston Almshouse, noted in an 1808 letter to a fellow doctor that he had 18 cases of insanity at the Almshouse in the past year, “a 4 per cent incidence of insanity in the Almshouse population of the sick.” In addition to the insane, the Boston Almshouse frequently housed people with alcohol problems: “[i]t not infrequently happens, that cases are admitted to the Almshouse of delirium, brought on by irregular modes of living and the habit of taking intoxicating liquors to excess.” Gorham complained that “the establishment is exceedingly deficient in method and conveniences,” but he hoped that it was “merely temporary and will probably exist only till the erection in Boston of an extensive Lunatic Hospital on the plans of the Pennsylvania or London Institutions.” Until a lunatic hospital was established, “it is impossible for the physician to pay a proper degree of attention to his unfortunate patients or to take use of those methods of treatment which seem best calculated to restore them both to themselves and to society.”¹²

Starting in the 1830s, doctors – spurred by public advocates and the broader recognition of the non-treatment to be found in almshouses – were more successful in gaining public attention and state funding for the commitment and treatment of the insane in lunatic asylums. Additionally, the center of gravity of treatment shifted from small-scale private asylums catering to wealthy patrons to larger public hospitals devoted to treating the public. By the start of the Civil War, there were 62 non-

¹² Mohl, *Poverty in New York City*, 23. Jacques M. Quen, "Early Nineteenth-Century Observations on the Insane in the Boston Almshouse," *Journal of the History of Medicine and Allied Sciences* 23, no. 1 (1968): 80-85.

proprietary asylums in the United States, up from 9 just 40 years earlier; nearly every state had at least one hospital or asylum specializing in mental illness. 1844 marked the founding of the Association of Medical Superintendents of American Institutions for the Insane, the precursor of the American Psychiatric Association, and the first publication of the *American Journal of Insanity*, the trade journal for asylum superintendents. By 1861, the United States had 27 state-owned and operated “idiot schools” and 48 “idiot schools” in all.¹³

In order for lunatics and idiots to reap the benefits of these new institutions, reformers and state bureaucrats marshaled statistics, published reports, and lobbied state legislators to reveal the problems of housing people with mental ailments in poorhouses and prisons, and to fund new asylums designed for their treatment. The example of Massachusetts is instructive in tracing the trajectory of institution building, and the social and cultural work of definition and categorization attached to it.

Early developments in the creation of lunatic hospitals depended upon the largesse of local elites. In 1810, Reverend John Bartlett, the chaplain of the Boston almshouse, appointed four doctors and three prominent Bostonians to a new committee, whose job was to “consider the expediency of establishing a General Hospital for the reception of the sick, lunatic, and pregnant women, who may need such an asylum.” Two of the doctors, John Collins Warren and James Jackson, took up Reverend Bartlett’s charge and published a circular arguing for the hospital. The

¹³ David A. Rochefort, *From Poorhouses to Homelessness: Policy Analysis and Mental Health Care* 2nd. Ed. (Westport, CT: Auburn House, 1997): 21.

doctors contended that “[i]t is worthy of the opulent men of this town, and consistent with their general character to provide an asylum for the insane from every part of the Commonwealth.” If the insane were not treated, then their condition became incurable and they and their families were ruined financially. Moreover, caring for the sick poor was a Christian duty of the fortunate. The Massachusetts General Court passed an act of incorporation for a hospital in 1811. The majority of the funds for the hospital, named McLean Asylum, however, came from private funding and in turn, the asylum treated mostly private patients. Massachusetts continued to lack a specialized institution for impoverished lunatics.¹⁴

The next group to lobby on behalf of lunatics was the Boston Prison Discipline Society, founded in 1825. Through their investigations into prison conditions, they reported on the poor treatment of lunatics in jails. Their 1827 report observed that at least 30 lunatics were in Massachusetts prisons. The report noted their appalling treatment. A lunatic that had been imprisoned for nine years

had a wreath of rags around his body, and another round his neck. This was all his clothing. He had no bed, chair, or bench. Two or three rough planks were strewed around the room: a heap of filthy straw, like the nest of swine, was in the corner. He had built a bird’s nest of mud in the iron grate of his den. Connected with his wretched apartment was a dark dungeon, having no orifice for the admission of light, heat, or air, except the iron door, about 2 ½ feet square, opening into it from his Prison. The wretched lunatic was indulging [in] some delusive expectations of being soon released from this wretched abode.

Another lunatic had been imprisoned for 8 years, and in that time had only left his room twice. He had no fire for heat, and food was pushed through a hole in his door.

¹⁴ Grob, *State and Mentally Ill*, 17-18.

“As he was seen through the orifice in the door,” the report recounted, “the first question was, is that a human being? The hair was gone from one side of his head, and his eyes were like balls of fire.”¹⁵

The efforts of the Boston Prison Discipline Society were widely publicized. For instance, the Society published 4,000 copies of its fourth report, published in 1829. The Massachusetts legislature bought 600 copies of its own. 2,000 copies of the first four reports were reproduced in book form. Each report went through multiple editions.¹⁶ The Society’s efforts paid off in legislative action. The Massachusetts Legislature created a committee in 1826. Their investigation, published in 1827, reported that there were a great number of “lunatics, and persons furiously mad” imprisoned in jails. “The situation of these wretched beings calls very loudly for some redress,” the report concluded. “Less attention is paid to their cleanliness and comfort than to the wild beasts in their cages, which are kept for show...However humane gaolers may be they are generally ignorant of the proper method of treating insane persons, and this ignorance makes their treatment of them operate to render them more furiously mad.”¹⁷ The report proposed that all lunatics should be transferred to Massachusetts General Hospital. If Massachusetts General could not accommodate the entire population, a new asylum for the poor insane should be created and supervised by McLean asylum.

¹⁵ Boston Prison Discipline Society, *Annual Report*, II (1827), 19-20.

¹⁶ Grob, *State and Mentally Ill*, 23.

¹⁷ *Ibid.* Mass. House Report No. 50 (February 16, 1827), 9.

Moreover, the committee proposed that the legislature should pass a law making it illegal to imprison mentally ill people in jail or houses of correction.¹⁸ Prominent reformer Horace Mann was appointed the chair of a committee to investigate “the practicability and expediency of erecting or procuring, at the expense of the Commonwealth, an asylum for the safe keeping of lunatics, and persons furiously mad.” Local selectmen were charged with providing the secretary of state a statistical report of the insane people in their towns, including number, age, sex, color, and confinement status.¹⁹

Mann’s committee published its first state census of the insane in 1830. 114 towns out of the 310 in Massachusetts provided statistical information. Of the 300 insane they reported, 161 were confined, including 78 in poorhouses, 19 in jails, 10 in insane hospitals, and 50 in private homes or undetermined areas. In his address to the Massachusetts House of Representatives, Mann urged them to create a new lunatic hospital: “Justice, no less than mercy required the Legislature to do something and no longer to let this class of unfortunates be thus neglected.” The previous laws passed by the legislature served to injure insane people by imprisoning them in jails. Instead, Mann argued, a lunatic hospital would prove to be a smart investment for Massachusetts, as insane people could thereby be cured and become economically productive. Significantly, Mann marshaled evidence of a high cure rate for insane

¹⁸ Grob, *State and Mentally Ill*, 23-24. Mass. House Report No. 50 (February 16, 1827), 9.

¹⁹ Grob, *State and Mentally Ill*, 23-24. Mass. House Report No. 50 (February 16, 1827), 9.

people in asylums to bolster his case. He used statistics from the work of an English doctor, George M. Burrows, author of *An Inquiry Into Certain Errors Relative to Insanity and Commentaries on the Causes, Forms, Symptoms, and Treatment, Moral and Medical, of Insanity*, along with evidence from 40 European hospitals, to argue that 50% of insane were curable if given proper treatment and supervision.²⁰

The resulting hospital, built in 1833, became a model for those built thereafter. Worcester Hospital divided the insane into 3 categories. The first, those lunatics considered dangerous to the community, were confined in jails and houses of correction by judges. The second, “town pauper lunatics,” were sent to poorhouses by municipal authorities or auctioned off to employers. The third group was composed of people who lived at home under family care. The hospital proposed that the first group be sent to the hospital instead of prison. Initially, hospital officials were quite optimistic as to the possibilities of treating the insane. They noted the pessimism that marked the early days of treating insanity:

Until a period comparatively recent, insanity had been deemed an incurable disease. The universal opinion had been that it was an awful visitation from Heaven, and that no human agency could reverse the judgment by which it was inflicted. During the prevalence of this inauspicious belief, as all efforts to restore the insane would be deemed unavailing, they of course would be unattempted. And even at the present day and in communities otherwise enlightened, there is reason to fear that a lamentable degree of ignorance prevails upon this subject; an ignorance, which, could it be once dispelled, some of the most painful records in the history of human suffering might be closed, immediately and forever.²¹

²⁰ Grob, *State and Mentally Ill*, 29.

²¹ Ibid.

Now, though, the period of pessimism was over:

It is now most abundantly demonstrated, that with appropriate medical and moral treatment, insanity yields with more readiness than ordinary diseases. This cheering fact is established by a series of experiments, instituted from holier motives and crowned with happier results, than any ever recorded in the brilliant annals of science. A few individuals, justly entitled to a conspicuous station among the benefactors of their race, have exploded the barbarous doctrine that cruelty is the proper antidote to madness, and have discovered that skill, mildness and self-devotion to the welfare of the insane are the only efficacious means for their restoration.²²

This optimism, however, was short-lived. Towns and other institutions were eager to dump troublesome inmates in the hospital. The superintendent of the Boston House of Industry contacted the hospital in August of 1832, eager to find out when the hospital would open. "Of the 500 inmates here," he wrote, "50 are more or less insane and about one half may be described as 'furiously mad' requiring almost constant confinement in close dormitories. Others are periodically or occasionally violent or extremely irrational – all require much anxious attention. In a majority of cases no hope of complete restoration to sanity exists."²³

As towns dispatched their most troublesome insane patients to the hospital, the inmate population became disproportionately composed of dangerous and/or poor pauper lunatics. For example, out of the first 40 patients, 8 were convicted murderers. The hospital became increasingly a place for custodial care, rather than for therapeutic

²² Ibid.

²³ Ibid., 49.

or moral treatment, which became the sole province of private hospitals with affluent patients. Worcester Superintendent Samuel Woodward's 1st annual report revealed that of 164 patients, over half had been sent from jails, almshouses, and houses of correction and one third had been in confinement between 10 and 32 years. Woodward concluded that, "many were hopeless cases with little chance for improvement or recovery."

Woodward claimed high cure rates for patients who were recently insane, yet those coveted patients were rare in his asylum. In his annual reports, he argued that "[i]n recent cases of insanity, under judicious treatment, as large a proportion of recoveries will take place, as from any other acute disease of equal severity." In 1841, he reported a cure rate of between 82 and 91.5% for recent cases, defined as people insane for less than one year. For old cases, people insane for one year or more, the cure rate dropped to between 15.5 and 22.5%.²⁴

In the early years of the hospital, the population boomed. While the population of Massachusetts increased 63% between 1833 and 1846, the average number of cases in the hospital soared by 350% and annual new admissions increased by 82%. The hospital coped with the soaring numbers by sending people back to jails, releasing them early, and decreasing moral treatment. Towns continued to be liable for the costs, and were not relieved of their financial liability for their own resident patients until 1904. Nonetheless, many towns would save money by refusing payment to the hospital or

²⁴ Ibid., 49, 28, 61.

challenging the residency status of patients. The hospital, in other words, confronted challenges in both its patient population and its budget.²⁵

Many nonresident insane patients were sent to Worcester, which caused additional financial difficulties for the hospital. Since these patients were not formal residents of the town that sent them, the towns were not financially responsible for their treatment. In 1835, the Massachusetts legislature formally relieved towns of the financial responsibility for nonresident insane patients. In 1841, the Massachusetts legislature granted towns permission to recover from the hospital any money they paid for patients who were not residents. At the same time, however, the state did not pick up the costs for these nonresident patients either. Most of the patients at Worcester were middle or lower class; the few wealthy patients received better treatment.²⁶

As the hospital became increasingly overcrowded, rooms in the basement were used to house the increasing number of imbeciles and idiots. An 1839 editorial in the Boston Unitarian *Christian Examiner* called for a publicly funded expansion of the hospital. And even as the hospital itself became more like a jail, prisons and jails remained familiar locations for the mentally disabled. Noted reformer Samuel Gridley Howe composed an expose of a jail in East Cambridge that revealed the continued poor conditions for some insane people. Within a mile of Boston, he wrote:

are twenty unfortunate creatures, unsuspected of any crime, incarcerated with the felon and the homicide – cramped up within narrow cells, breathing a fetid

²⁵ Ibid., 78, 86, 90.

²⁶ Ibid., 91.

air, and festering in their own filth! The situation of a man who being supposed to be dead, should be buried, and coming to life, find himself in a charnal house, can be hardly more awful than that of one, who losing his reason for a time, should be confined in the Cambridge jail, and recover his sense to find himself lying by the side of a filthy idiot, and within a few feet of a raving maniac, glaring at him through the bars of his cage.

The jail authorities appealed to “the generous and enlightened community” to lobby the legislature. The lobbying led to a Joint Special Committee of the legislature that recommended a separate building for insane people that would be part of the jail. Dr. Anson Hooker, the doctor to the East Cambridge prison, wrote a public letter to the newspapers as a rejoinder to Howe’s expose. He argued that most of the 22 people confined in the jail for other than penal reasons were idiots and that the rest were incurably insane. Hooker’s letter spurred a month-long public debate that included Charles Sumner, Dorothea Dix, and Edward Jarvis. In the 1842 trustees’ annual report of the Worcester hospital, they recommended enlarging the hospital.²⁷

According to the 1840 census, there were 1,271 insane people in Massachusetts, and 650 of them required hospitalization. The existing Massachusetts facilities, however, both public and private, could only house 480 people. In January of 1843, Howe published an anonymous article titled “Insanity in Massachusetts” that was widely circulated in pamphlet form. Howe contended that society always contained dependent classes that typically relied on private charity. Insanity, however, was too difficult a challenge for only private charity, and required public assistance. “What is

²⁷ Ibid., 101-106.

the duty of the State towards these its unfortunate children?" Howe wrote. "With regard to the paupers it is clear and imperative; it is what should be the duty of every Christian government, -- to provide the best means for the cure of the curable, and to take kind care of the incurable." Insanity was a social responsibility because often insanity was the result of "imperfect or vicious social institutions and observances." Howe concluded that Worcester should be left exclusively for the treatment of pauper lunatics and Massachusetts should construct a second insane asylum. He ended, "let the State government be urged to make immediate and ample provision for *all* the indigent insane, cost what it may cost. Massachusetts is not too poor to do any thing that can be shown to do her duty."²⁸ Dorothea Dix joined Howe in calling for more provisions for Massachusetts' insane in her 1843 "Memorial to the Legislature of Massachusetts." Like her other memorials, Dix's public letter to the Massachusetts legislature leaned heavily on sentiment:

I come to present the strong claims of suffering humanity. I come to place before the Legislature of Massachusetts the condition of the miserable, the desolate, the outcast. I come as the advocate of helpless, forgotten, insane, idiotic men and women; of being sunk to a condition from which the most unconcerned would start with real horror; of beings wretched in our prisons and more wretched in our almshouses. And I cannot suppose it needful to employ earnest persuasion, or stubborn argument, in order to arrest and fix attention upon a subject only the more strongly pressing in its claims because it is revolting and disgusting in its details.²⁹

²⁸ Ibid., 106-107.

²⁹ Ibid., 106-107.

The journey from outdoor relief to the poor, where they received cash grants, to indoor poor relief in poorhouses and workhouses, to state-subsidized asylums for lunatics, to overcrowded public asylums and poorhouses still filled with lunatics, became a well-traversed path for states, with a number of common steps. As reformers traveled from state to state, they fertilized localities with their ideas about poverty and insanity and pitted states against each other in an effort to secure more funding. For example, when Dorothea Dix visited Springfield, Illinois, in 1846, the *Sangamo Journal* reported “Miss Dix desires at present to draw attention to the citizens of this State, to the necessity, economy, and humanity, of establishing under the joint patronage of the State and liberal individuals, an Asylum for the Insane.” Dix traveled to 8 counties in Central Illinois and charged that at least 300 insane people were housed in the jails and almshouses she visited.³⁰

Reformers also framed the insane as scary, violent, pathetic, and grotesque. Statistics and sentiment produced an abundance of new knowledge about these groups, yet also objectified them as voiceless grotesques or a set of numbers with no agency. Dorothea Dix’s 1844 “Memorial to the New York State Legislature” recounted the horrifying sights she encountered during her travels through New York State. At Albany alms-house, the master told her that there were “plenty of” insane people in the institution; they were “naked, in the crazy cellar.” In the dungeons, she saw a

³⁰ Ibid., 106-107. Frank Norbury, "Dorothea Dix and the Founding of Illinois' First Mental Hospital." 92 *Journal of the Illinois State Historical Society* (Spring 1999), 19.

“madman...a hideous object; matted locks, unshorn beard, a wild wan countenance, yet more disfigured by vilest uncleanness, in a state of entire nudity, save the irritating incrustations derived from that dungeon reeking with loathsome filth: here, without light, without pure air, without warmth, without cleansing, without *anything* to secure decency or comfort, here was a human being, forlorn, abject, and disgusting, it is true, but not the less a human being – nay more, an immortal being, though now the mind had fallen in ruins, and the soul was clothed in darkness...”³¹ Historian Ellen Dwyer noted that to support passage of “An Act to Authorize the Establishment of the New York State Lunatic Asylum” in 1836, “[s]ome legislators found most useful the negative aspects of the appeal and emphasized the social threat posed by the increasingly visible insane people in their cities and towns.”³²

Reformers made an economic argument that a state-funded asylum would provide economies of scale and efficiency. It would prove easier to manage and would be cheaper than a series of local asylums. Also, asylum officers could provide moral treatment and not just custodial care, so that the insane would be cured and thus productive again. Legislators and reformers also stressed the economic benefits that would accrue if they built an insane asylum. According to Ellen Dwyer, legislators “from areas burdened with large numbers of dependent paupers promised that a state

³¹ “Dorothea Dix, Memorial to the New York State Legislature”, in Dorothea Dix, *On Behalf of the Insane Poor: Selected Reports 1842-1862* (New York: Ayer Co. Publishers, Inc., 1937).

³² “Ibid. Ellen Dwyer, *Homes for the Mad: Life Inside Two Nineteenth-Century Asylums* (Rutgers University Press, 1987), 34.

asylum would lessen their counties' financial burdens. They also rejoiced in the prospect of turning social dependents into economically productive citizens."³³

Reformers marshaled a number of statistics to make their point. As historians Patricia Cline Cohen, Ellen Dwyer, and L. Ray Gunn have argued, the arguments of antebellum reform and humanitarianism were saturated with facts and figures. In New York, the first comprehensive study of the poor in the United States, the Yates Report in 1824, used statistics to argue for indoor relief for paupers and specialized treatment for sick or disabled paupers. The report estimated the annual cost of a pauper in an almshouse at twenty to thirty-five dollars and on outdoor relief not less than thirty-three to sixty-five dollars; if the pauper was old or sick, outdoor relief would cost at least eighty or one hundred dollars each year. County poorhouses, it was also argued, would spread the financial burden of relief more evenly among rural and urban areas, in contrast to the current system under which urban areas often paid three times as much as rural ones. Another projected benefit of a county poorhouse system was its contribution to the reduction of settlement problems: "The expenses of removals from extreme parts, and the consequent grievous litigation, as well as the payment of the innumerable host of officers, would be avoided." Moreover, the report noted that out of 6,896 paupers in the state, 446 were lunatics. The New York Board for the new asylum emphasized the treatability of insanity in their 1841 report. Also, the Senate committee on pauper insanity offered a series of statistics for the cost-effectiveness of treating the

³³ Dwyer, *Homes for the Mad*, 34.

pauper insane in an insane asylum: "If treated promptly, pro-asylum politicians argued, 75 percent of those insane less than a year would recover; if left alone or sent to a county poorhouse, only 7 percent could be expected to recover without treatment, 930 would be left to be supported by the public for an average life of eighteen years. At the low per capita maintenance cost of \$1.50 per week, these 930 paupers would cost the counties \$72,540 per year, and \$1,235,720 for their lifetimes. Under a system of state care, 750 of these 1,000 insane paupers could be expected to recover within an average of ten months, for a total treatment expense of \$90,000. The 250 incurables, even if provided for at the generous sum of \$12 per month, would cost the state \$648,000 over the course of their lifetimes. As a result, while the state system initially would cost taxpayers more, over a period of eighteen years it would save them \$497,720 in support costs, as well as returning cured patients to the work force." Furthermore, Utica itself lobbied to place the asylum within its borders, so the city could reap the economic benefits.³⁴

People with mental disabilities became an important part of a state's reputation. Reformers used state funding as a competitive measurement to leverage more support for benevolent institutions. John Galt, the superintendent of Eastern State Hospital in Virginia, lectured on idiocy and noted multiple examples of state support for idiot schools, including the New York State Asylum for Idiots, the idiot asylum in Columbus,

³⁴ Katz, *Shadow of the Poorhouse*, 22, quoting Quincy Report, 8, Yates Report, 995. Dwyer, *Homes for the Mad*, 30, 35, 37, 41.

Ohio, and the Eastern Lunatic Asylum of Kentucky at Lexington. He ended his list of state support with his strategic plea that “e]xperimental schools [for idiots] have been elsewhere followed by permanent and well endowed institutions; and the education of idiots is now the settled policy of many European governments, as it is of at least three of the states of the Union. May Kentucky soon be found emulating their noble example.”³⁵

Tabulations of idiots and lunatics, classified by state, were also available for public consumption, discussion, and accusation. Politicians measured the generosity – and affluence – of their states by the numbers and proportion of the insane they were able to serve, and by the grandiosity of asylum architecture, which exploded into its own forms, rich with meaning. Ellen Dwyer observed that the façade of Utica Asylum in New York made it look imposing and luxuriant. “Like Worcester State Hospital and the Pennsylvania Hospital for the Insane, the Utica Asylum embodied the architectural ideals of the first generation of asylum superintendents. Those men felt that massive formal buildings signified the importance of their therapeutic mission. In New York, such a construct also satisfied the wishes of politicians for an institution in which the ‘Empire State’ could take pride.” “New York’s governor at this time, William Seward...supported the commissioners in their extravagance, eulogizing the projected asylum as ‘commensurate with the exigencies of the State, not unworthy of its growing

³⁵ John Galt, “A Lecture on Idiocy”, (1859), 28, 35-36, 29.

wealth, and justly designed to endure as a monument of the taste and munificence of this age.”³⁶

The public also recognized the economic benefits of the asylums within their midst. During the outdoor relief period, localities tried hard to expel non-resident paupers and decline funding for local ones, especially the lunatics. Now, far from shunning these institutions, towns lobbied for the placement of asylums within their borders. Virginians applauded the erection of Eastern State Hospital in Williamsburg, as “[i]t would give the little capital a new source of economic gain.” More than 30 towns submitted bids for the new lunatic hospital in Massachusetts. The finalists were Boston and Worcester. Worcester was chosen for geographic and political reasons. Boston was in the eastern part of the state and the central and western parts of Massachusetts were becoming increasingly concerned about Boston’s influence. Worcester, 40 miles to the west of Boston, was centrally located and well-placed with respect to the railroads. Furthermore, Governor Levi Lincoln was a Worcester resident. The Worcester legislature approved \$2,000 to buy a site for the hospital. Several towns lobbied for the new mental hospital in Illinois. Peoria, Hillsboro, and Chicago were the finalists for the site. Although the Illinois Senate chose Peoria, legislator William Thomas of

³⁶ Ibid. Dwyer, *Homes for the Mad*, 8, 36.

Jacksonville altered the bill to read Jacksonville instead. Jacksonville received the Illinois School for the Deaf through the same maneuver by Thomas in 1839.³⁷

As William Thomas's savvy move suggests, politicians had particular reasons for supporting asylums. State legislators or governors appointed asylum board members and officers, and it was not uncommon for the replacement of the entire personnel when the political party in charge shifted. In New York, between 1801 and 1809 as the political leaderships switched five times, the asylum superintendent did so as well. In Virginia, asylum directors and officers, Whigs and Democrats alike, sold commodities and hired out their slaves at the hospital. Norman Dain calculated that the value of the Eastern State hospital job was worth \$500 [profits from legislative appropriations] + \$2,000/year [selling supplies to the hospital] + the use of asylum funds interest free. A pithy Williamsburg saying encapsulated the close relationship of patrons and asylums: "in Williamsburg...the town was a place where 'the lazy take care of the crazy.'"³⁸

Though the efforts of Dix and others were able to create a state-supported infrastructure for people with mental disabilities, the system was not without its costs.

³⁷ Norman Dain, *Disordered Minds: The First Century of Eastern State Hospital in Williamsburg, Va., 1766-1866* (Charlottesville, VA: University of Virginia Press, 1971), 38. Grob, *State and Mentally Ill*, 30. Norbury, Dorothea Dix and the Founding of Illinois' First Mental Hospital, 21.

³⁸ Mohl, *Poverty in New York City*, 75. Dain, *Disordered Minds*, 146, 148, 158. The linkage of people with perceived economic or mental difficulties, with particular communities, though, could prove troubling. New York newspapers signaled an early version of this when they reported that in 1795, of 622 residents in the New York almshouse, 276 or 44% were immigrants. An editorial in the *New York Minerva* warned: "We shall be over-run with vagabonds. We shall have the refuse of all the corrupt parts of society poured into our county." Municipal administrators and city council men advocated for immigration restrictions for New York City. Mohl, *Poverty in New York City*, 17.

Reformers characterized lunatics and idiots to the public and legislators as pathetic grotesques in need of public largesse by a benevolent populace. Moreover, this structure became overrun as states failed to support the asylums that they built and the institutions themselves did not cure patients at the rate they initially promised. By the 1850s, asylums became warehouses for the chronically insane and idiotic, rather than temporary stopping points for people on their way to health and economic success.

Institutions pulled people from their communities and concentrated them together in a state of dependency. Reformers wanted a neat distinction between poorhouses and asylums. Poorhouses would be emptied of the virtuous, non-able-bodied and non-able-minded poor as they were transported to asylums. Poorhouse inhabitants would then only be negative symbols of economic failure, undeserving able-bodied paupers. The results, however, were mixed. Because asylums were overcrowded, many lunatics remained in poorhouses. At the same time, the majority of asylum residents were also paupers. At best, a pauper was a lunatic. At worst, he was an able-bodied man dependent upon taxpayers for his livelihood. This imagery branded them as social weeds that needed to be rooted out for society to flourish. Not only were they poor, they had no agency or voice to direct their care.

Dependence, Independence and Voting Reform

Widely shared but historically derived understandings of paupers, lunatics, and idiots all ran counter to the ethos of independence that characterized voting.

Individuals fit these “dependent” categories, in significant part, through their location within the developing institutions of mental disability. Even those not confined to institutions, however, might be viewed and defined in relation to the social identities assigned to the institutionalized. Since closely related ideas of dependence and independence had long structured considerations of suffrage, it is important to consider how these new institutional models were digested by the political state in terms of voting and citizenship.

States faced a fundamental puzzle after the revolution. They had to revise or in some cases draft new constitutions that were in keeping with the new national constitution. The Revolution at its founding had a strong ethos that the people were the sovereigns, not the crown or any overarching predetermined elite authority. In reality, however, a subset of people, because of their property holdings or financial accumulations, comprised the actual electorate. They were the ones who were considered to have the independence necessary to cast votes and hold office. This view of independence was borrowed from England, and during the antebellum period, it changed in fundamental ways. Every state that had property and/or tax qualifications for voting removed these qualifications for white men. Though these changes allowed more men, especially ones without elite financial status, to vote, state constitutional delegates also kept restrictions on the franchise for women, African Americans, Indians, and some white men. Of the 34 states in the Union prior to the Civil War, 17 banned

people under guardianship, those suffering from a mental handicap or of unsound mind, and/or idiots and lunatics from voting and 14 banned paupers from voting.³⁹

Over the course of the antebellum period, historians emphasize, voting became an important component of citizenship, American identity, and white male respectability. In the succinct words of Mark Kruman, “Men acted politically by voting.” Jean Baker affirms that “[d]iscussed before the Civil War at constitutional conventions (assembled in some cases just for that purpose), during election campaigns, at meetings of workmens’ associations, in newspapers and private conversations, the question of who had the vote transfixed mid-century Americans. More than a mechanism by which government derived its just power, voting became a hallowed ceremony, an occasion for manifesting the self-governeds’ virtues of restraint as well as a community ritual with prescribed episodes.” Noah Webster’s 1828 edition of his dictionary defined *citizen* as a “person native or naturalized who has the privilege of exercising the elective franchise or the qualifications which enable him to vote for rules.” In the 1830s, Alexis de Tocqueville observed that Americans were preoccupied with voting. He attributed American enthusiasm for voting and the extension of the right to vote to America’s “unique democratic spirit.”

Strikingly, this most important component of American identity emanated from an assemblage of state -- not federal -- decisions and rhetoric. As the United States

³⁹ Maine, Massachusetts, Vermont, Virginia, Delaware, Rhode Island, New Jersey, Louisiana, Iowa, Wisconsin, California, Minnesota, Oregon, Ohio, Maryland, and Kansas.

Constitution left the details of voting unwritten and the parameters of citizenship ambiguous, state actors filled the void through the drafting and revision of their constitutions. Despite their differences on many subjects and their various party affiliations, delegates were strikingly united in their denigration of paupers and people with mental disabilities.⁴⁰

State constitutional convention delegates used rhetorical devices to suggest a parade of horrors if the unfit voted, and strategically linked denigrated white disfranchised voters with those groups considered unfit for the vote, such as blacks or women. To link together poor white male voters and say, black or female voters, delegates contended, would work to the disadvantage of the poor white male voter, who would have no way to distinguish himself morally and intellectually from the black or female voter.

Delegates also contended that if paupers or lunatics were able to vote, then widespread electoral fraud and mayhem would follow. This imagined community rhetoric of a clean and respectable election belied the messy process voting often entailed. Political parties used elections as warfare to gain advantage for their side, election laws remained vague and unevenly enforced, potential voters were plied with

⁴⁰ Rogers, *Voting and the Spirit of American Democracy*, 36, 3. Marc W. Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997), 107-08. Jean Baker, *Affairs of Party: The Political Culture of Northern Democrats in the Mid-Nineteenth Century*. (Ithaca: Cornell University Press, 1983), 268-69. Noah Webster, *An American Dictionary of the English Language: A Facsimile of Noah Webster's Original 1828 Edition*, (New York: Johnson Reprint Corporation, 1970).

liquor at the polling places. Though certain people were tagged as bringing disorder, the voting process itself was inherently disorderly, even as it gained importance as more people were brought into the franchise and voting became an important marker of white male respectability.

These histories – of voting and of mental disability – were critically linked. At the same time that reformers were constructing lunatics, idiots, paupers and other dependents as social problems tethered to the state, state constitutional convention delegates constructed them as disfranchised citizens. The disenfranchisement of white men classified as mentally deficient or of bad character because of their pauperism served several main purposes: it acted to knit together a heterogeneous group of white men of different abilities, statuses, and classes; it shored up the respectability of the vote; and it reassured the white populace and elites alike that the expansion of suffrage to poor and middling white men did not necessarily lead to universal suffrage.⁴¹

In the words of Delegate Merrill of New York, “So far as the lunatics and idiots are concerned, the sentiment has been general that they should not vote.” Delegate Robertson of New York concurred: “To be a citizen a human being must be possessed of reason. The mere human form does not give citizenship. The right of political

⁴¹ John Adams, for instance, voiced the concern about eliminating suffrage restrictions leading to universal suffrage: “John Adams understood that the logic of the revolutionary argument encouraged Americans to reinvent their political community, but he feared an egalitarian polity and disruption of the war effort. Changes in existing suffrage regulations, including any reductions in property qualifications he warned, might open a Pandora’s box of political dangers: ‘New Claims will arise. Women will demand a vote. Lads from 12 to 21 will think their Rights not enough attended to, and every Man, who has not a Farthing, will demand an equal Voice with any other in all Acts of State. It tends to confound and destroy all Distinctions, and prostrate all Ranks, to one common Levell.’” *Between Authority and Liberty*, 89.

citizenship is suspended during the temporary absence of reason; the mere possibility of a return of reason, joined to the ties of humanity, constitutes the only ground for including idiots and lunatics in the body politic. It is absurd to imagine a public officer elected by the votes (so called) of the inmates of a mad-house. The very word “vote” implies a rational selection, and I see no reason for excluding those destitute of reason from voting by a constitutional provision.” Delegates did not debate whether lunatics and idiots should be disfranchised. This was taken as a given. Strikingly, though, this unanimously held sentiment was still constitutionalized; this suggests that delegates wanted to enshrine this prohibition for the long term, and also make sure that it did not become a football for political parties who might enfranchise lunatics and idiots for political leverage.⁴²

What was discussed was the scope of the provision. If the definition was expansive, such as prohibiting lunatics and idiots, election officials would be empowered as a quasi-judicial and legislative body charged with investigating people’s mental status at the polls. Limiting the definition to restricting only people under guardianship, like the early prohibitions in Maine did, would be easier to enforce, but encompass fewer people. Delegate Scott noted that “it is well known that there are different degrees of lunacy or insanity.” Thus, “the difficulty was how to fix a rule to exclude the insane or lunatics from voting. It occurred to the committee that the only

⁴² *Debates and Proceedings in the New York State Convention, for the Revision of the Constitution [1846]*, S. Croswell and R. Sutton, reporters for the *Argus* (Albany: Office of the Albany Argus, 1846). [Hereinafter New York Constitutional Convention]

rule that they could safely lay down, was contained in the words of the present constitution, to exclude only those persons who were actually under guardianship.” Otherwise, “any other course would be to throw the whole matter before the judges of election. One man would argue that a certain person was incapable of voting, because he was a lunatic, while others would insist that the person was sane. It would be an endless question. The old constitution wisely decided to exclude from voting only those who were under guardianship.” Several delegates rebutted his concern by invoking the specter of lunatics or idiots voting while election officials were helpless to do anything about it. Here, spectacle did not serve as a vehicle of reform, as when Dix and others employed it, but instead aided in disenfranchisement and political banishment.

Delegate Thurston declared that, “It is well known in every community, by common reputation, that such persons are idiots and lunatics, and it is not often that they offer to vote. When they do it is always at the instigation of interested persons, and I want to exclude them.” In his community, despite the lack of a constitutional provision prohibiting their vote, “it has been the practice of judges of election to exclude those commonly known and recognized among their neighbors as idiots and lunatics, who are notoriously such, as persons who ought not to be allowed the right of suffrage.”

Delegate McDonald of New York added: “In my own town they have a lunatic there, whom one party makes vote one year, and another party another year just as they happen to get possession of him, and there is no possibility of ruling him out.” He warned, “I live in a town where the election is pretty close; if it should be turned by one

vote, then the lunatic would elect the whole ticket." He announced, "Let us declare our position plainly; let us not be afraid to say lunatics and idiots should not vote as we believe, and leave it to the Legislature to find out the mode of determination....in some cases it may turn out that lunatics and idiots may elect the whole ticket when it is elected by a small majority, and without this provision there is no mode of prohibiting lunatics or idiots from voting." New York Delegate Greeley noted, "Here comes up a raving lunatic – notoriously so. Everybody knows he is crazy. He comes and offers his vote, and the inspectors cannot refuse his vote unless he has been judicially declared to be of unsound mind." He added, "Where I voted last fall, a person who was a resident of the county, only by virtue of being placed by the court in charge of a committee or guardian, appeared at the polls and offered his vote. His vote was challenged, but he swore it in under the direction and guidance of the people who had charge of him, by order of the court, and we could not help it." Greeley declared that he did not "believe that the right of suffrage belongs to persons of any class, whose vote will not contribute to the intelligence and capacity which go to make up the popular verdict." Moreover, "It is no benefit to these poor creatures, to make them voters. It is a cause of discord and contention at the polls, for in times of high party excitement, persons who we know ought not to vote, will be brought, and if they not the proper mental capacity to vote, they will be crowded through." New York Delegate Endress lamented that "Would it not be rather a farce upon the elective franchise, for a person, without reason, to be allowed to pass judgment on public affairs by voting, and yet I have seen it done, a

great many times, in the case of idiots — not persons of unsound mind, merely, but idiots. I have never seen a lunatic vote, but I have seen persons under guardianship, out of the poor-house, brought to the polls by their keepers.”⁴³

The spectacle of lunatics and idiots voting while under institutional control was an important part of the delegates’ arguments. The delegates invoked community knowledge of lunatics and idiots to align with legal prohibitions and imagined a state of community consensus against enfranchising lunatics and idiots to make their points. Despite this agreement, the difficulty was that few lunatics or idiots were actually declared such by law and placed under guardianship. Delegate Greeley observed: “We very well know that there are lunatics everywhere in the State, in reference to whose lunacy there has never been a judicial determination. If I understand the proposition all these other classes would be entitled to vote, because they have not been officially declared as belonging to those classes.” Delegate Endress added: “if we assume that he must be judicially declared an idiot, we do not reach one case out of ten. There is hardly one case in ten in which idiots have been judicially pronounced to be so. They never are judicially declared idiots unless they happen to be possessed of property. And so likewise in the case of lunatics.” New York Delegate Lapham asked, though, what election officials were expected to do: “Suppose a person comes to the polls, who is not a raving maniac, but who is challenged on the ground that he is insane and a lunatic? How are the inspectors to determine that question? Are they to sit and try the case and

⁴³ Ibid.

hear what the witnesses may have to say, in order to determine the state of mind of the person who offers to vote? While the case of the raving maniac is an exception and rarely occurs at an election, the cases in which the question I have suggested may arise would be numerous at every election." New York Delegate Barker added "It is well known in the experience...this involves the most delicate question that has ever been submitted to jurors or jurists. It has elicited great debate in our superior tribunals, and there have been different opinions by many of the learned men of the land as to what constitutes an idiot or lunatic." Delegate Barnard worried that "While they are investigating whether a man is an idiot, or a person of unsound mind, they may be excluding two hundred legal voters from the privilege of the elective franchise." Some delegates did not understand what the trouble was, as it was easy to determine lunacy or idiocy. Delegate Endress declared "The word idiot has a definite and clear signification. There can be no misunderstanding about it. An idiot is not a person of unsound mind merely. The word does not refer to the degree of intellect, but it means a person who has an absolute lack of all intellect. A person who thus comes in the form of a man, but without reason, before the inspectors of election, to be registered, who shows himself to be an idiot, and the inspectors cannot be mistaken in reference to him." Moreover, "I had the honor, when the subject was under consideration in the committee, to move that the section should include 'lunatics during the period of their lunacy,' because there can be no mistake about a person's unsoundness when the lunacy is upon him. If he is raving mad when before the registers they will not register

him. I think there can scarcely be a mistake about that class of persons. We are two-thirds of us lawyers, and lawyers of good standing in this State, and I appeal to lawyers whether there can be any mistake about this phraseology.” Delegate Dwight concurred:

the vote of such a person...would be kept out by the simple imposition of the challenge, which would require the ‘utterly senseless idiot,’ whom the gentleman alludes to, to answer certain questions which it would be impossible for him to answer, and that his vote would thereby be effectually excluded. In order to determine who is an idiot, the rule is very simple. A man who cannot tell his age, and do other simple acts of that kind, is known as an idiot at common law. A lunatic is a person who has departed from the natural course, and shows natural evidence of it – outward evidence – in what is called frenzy. Here we have ocular evidence as to who a lunatic is. Then there is a large class of persons who have lost their faculties by age – whose memory is impaired and who have become unfit for the management of their affairs, who would come under the other class – persons of unsound mind; so that there is partially no difficulty in telling who a lunatic or who an idiot is, because we have the outward signs.

The urgings of these delegates may have been persuasive, for as the 19th century progressed, prohibitions shifted from guardianship to the more expansive lunacy or idiocy. Strikingly, doctors and medical knowledge were not a part of the deliberations, just the efficacy of common sense. Perhaps because of the assurances of delegates such as Dwight and Endress that idiocy and lunacy were easy to determine, states failed to enshrine methods for determining lunacy or idiocy at the polls. As the rest of this dissertation shows, it was no easy task.⁴⁴

Delegates also agreed that paupers should be disfranchised because of their potential for political corruption, their dependency, and their bad character. Delegate

⁴⁴ Ibid.

Greeley declared that disfranchising paupers was “in effect, a proposition to deprive some fifty or sixty managers of poor-houses, and dispensers of public alms, of the privilege of casting eight or ten thousand votes in this State.” He himself

personally participated in an election where a member of congress was chosen directly by votes brought out of the almshouse in New York for that purpose, the intent being, as the effect was, to elect a member of Congress by the votes brought from that institution. When the subject came before Congress, Congress decided that that was not an election, and sent it back to the people, and another choice took place. And, yet, if we make this amendment we shall see that it is perfectly appropriate and proper for men managing almshouses practically to control that matter. There are in the New York almshouse, five hundred persons who are paupers. Do not we know that the men who control that almshouse will contrive to let out such men to vote? I suppose that cannot be questioned. I know that last year the almshouse was largely depopulated to send away into the several wards, men to vote in that election, on the ground that they had not lost their residence by being in the almshouse two years. They could be sent back to the original wards, where they could vote. You know very well that the political party which has not control of the almshouse will not get any of those votes. They will be compelled, nay, they will be told “If you go out to vote except as we say you cannot come back; we will shut you out, or put you on bread and water.” If that were not so, they would say, “If you do not give us roast turkey tomorrow, we will vote against you at the next election.” They understand that. I beg the committee to look at the effect. If it was giving five hundred or five thousand men the right of independent voting in this State, that would be one thing. But if you give forty or fifty men who control the almshouses of the State, the control of two or three thousand votes, I do not believe that is in accordance with the republicanism...I believe there has been great corruption in the doling out of votes from the almshouses in support of the political party which has control of them....

Several delegates argued that poor people should be prohibited from voting because the vote should be seen as a tool of aspiration; poor people should work to

receive the vote, it should not just be given to them. Delegate Dutton of Massachusetts, a delegate in favor of a property qualification for voting, contended that the vote

was in the nature of a privilege, and as such it was connected with many virtues, which conduced to the good order of society. It was a distinction to be sought for; it was the reward of good conduct. It encouraged industry, economy and prudence, it elevated the standard of all our civil institutions, and gave dignity and importance to those who chose, and those who were chosen. It acted as a stimulus to exertion to acquire what it was a distinction to possess.

Given that “in this country, where the means of subsistence were so abundant, and the demand for labor so great,” Delegate Dutton continued, “every man of sound body could acquire the necessary qualification.” If an able-bodied man failed to prosper, then it was due to his poor character, “ordinarily because he was indolent or vicious.” Thus, the vote was “valuable as a moral means” to filter for the appropriate character of voter.⁴⁵

This sentiment did not go unchallenged, however. Delegate Austin, of Boston asked, “what will you do with your laboring men? They have no freehold – no property to the amount of two hundred dollars, but they support their families reputably with their daily earnings. What will you do with your sailors? Men who labor hard, and scatter with inconsiderateness the product of their toil, and who depend on the earnings of the next voyage. What will you do with your young men? Who have spent all their money in acquiring an education. Must they buy their right to vote? Must they depend on their friends or parents to purchase it for them? Must they wait till they have turned

⁴⁵ Massachusetts Constitutional Convention, 121.

their intelligence into stock? Shall all these classes of citizens be deprived of the rights of freemen for want of property?" While delegates such as Delegate Dutton viewed the property qualification as exerting moral force, Delegate Austin contended that "that force depends on education, and the diffusion of intelligence," not property holding. In fact, Delegate Austin continued, providing non-propertied laborers with the vote would help knit them into the fabric of society, rather than the opposite: "[b]y refusing this right to them, you array them against the laws; but give them the rights of citizens - mix them with the good part of society and you disarm them."⁴⁶

Multiple delegates discussed voting rights as a consequence of a social contract model. If people contributed to the social good, then they should receive the right to vote. In Massachusetts, Delegate Slocum of Dartmouth asked, "if we do not give laboring men the vote, how can we expect them to fight? "Who achieved our independence? This class of men. And shall we then disfranchise them? I hope not." "As the constitution now is these men are deprived of voting and must stand by and see the rich putting in their votes," Delegate Slocum contended. "Suppose an invasion should happen - these men would be obliged to come forward in defence of their country. He felt conscientiously bound to give them the right of voting." Opponents to extending the franchise also utilized a social contract argument. Delegate Story of Massachusetts argued that it was because of the rich that social institutions were established in the first place, as their "prosperity diffuses through the whole mass of the

⁴⁶ Ibid., 123.

community.” While many community members can partake of the benefits of social institutions, it is only the wealthy, according to Delegate Story, who truly fund this social largesse.⁴⁷

Delegates also reassured their brethren that citizenship would not automatically grant suffrage. Delegate Butler of Lowell in Massachusetts wanted to make sure that “insane persons, paupers, or persons under guardianship” would not be able to vote. Though he “did not think that a man ceases to be a citizen because he has the misfortune to be poor or insane,” he did not necessarily think that they should be able to exercise the duties of citizenship. He also pointed out that women are citizens who could not vote. Delaware Delegate Rodney asserted that “there could not be much difficulty” with respect to paupers. “Those who receive relief from the public, either within the Poor House or out of it, were not qualified to discharge the duties of citizens.”⁴⁸

Delegates had multiple theories as to what exactly constituted a pauper. Several delegates proposed that paupers were poor people who had a bad character. Though some people could be poor by accident, and “poverty may have been the result of unavoidable causes, causes entirely above and beyond his control.” A Massachusetts delegate asked rhetorically, “how someone could be a pauper when the country was so prosperous? Though there might be some paupers who have good characters, they are

⁴⁷ Ibid., 123, 139.

⁴⁸ Ibid., 330. *Debates of the Delaware Convention, for Revising the Constitution* [1831] (Wilmington: Samuel Harker, 1831), 23. [Hereinafter Delaware Constitutional Convention]

few in number.” Though those few good paupers might be disenfranchised along with the others, the Massachusetts delegate pointed out that laws often have some slight unfortunate consequences. One Virginia delegate believed that there were *no* good paupers. He argued for a freehold requirement “There is not a county in the State (unless, perhaps, the county of Jefferson) where a sufficient freehold may not be bought for fifty dollars; in many counties, it may be bought for twenty, in many for five dollars. No honest industrious citizen is excluded, who chooses to gain admission; no, none but the veriest paupers and drones in the community, whom all agree upon excluding.”⁴⁹

Delegate Bell from Chester sounded an alarm about the awful spectacle that would blight Pennsylvania if it came to pass that paupers were allowed to vote: “In all the counties to the south and east we have what are called poor houses, where all the paupers of the county are kept, and they are there put under the charge of a superintendent on whom they are dependent for every thing. Take away your tax qualifications and what a spectacle would be presented to the eye, to see some four or five hundred of these miserable and degraded wretches marching up the polls, and voting according to the direction of the person who had them in charge, and turning the scale, if the contest was close.” Delegate Martin took it as a given, though, that “Surely no man wishes to see vagrants, paupers and convicts at the polls, nor to permit any one to exercise the right of suffrage, who does not show a disposition to obey and sustain

⁴⁹ Massachusetts Constitutional Convention, 739. *Proceedings and Debates of the Virginia State Convention of 1829-30* (Richmond: Samuel Shepherd & Co. for Ritchie & Cook, 1830). [Hereinafter Virginia Constitutional Convention]; Delaware Constitutional Convention, 402.

the laws of the Commonwealth. There would be no practical difficulty from this source.”⁵⁰

Above all, delegates emphasized that paupers were undeserving of the vote because of their dependency. At the Virginia constitutional convention, a delegate asserted that paupers were disqualified from voting because of “their dependent condition, and consequent want of free agency, and of their want of interest in the well-being of a community in which they have no stake.” Delegate Rodney of Delaware argued that, “Paupers who live on the public funds, and who were under the direction of others, who might control their wills, ought not to be permitted to vote.” Delaware Delegate Clayton warned that enfranchising paupers would lead to fraud: “If persons might come from the Poor House and vote, merely because they had paid a tax within a specified period, the right of suffrage would not be settled as intended by the Convention. Such persons had been known in this county to go to the polls.”⁵¹

How to define pauperism, even in terms of dependency, turned out to be more difficult than expected. Maine delegates debated whether pauper as a word was not sufficiently definite, as it could define all those who are on state support or just those

⁵⁰ *Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania [1837]*, reported by John Agg, vol 2. (Harrisburg: Packer, Barrett, and Parke, 1837), 493. [Hereinafter *Pennsylvania Constitutional Convention*, vol. 2] *Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania [1837]*, reported by John Agg, vol 3. (Harrisburg: Packer, Barrett, and Parke, 1837), 159. [Hereinafter *Pennsylvania Constitutional Convention*, vol. 3]

⁵¹ *Pennsylvania Constitutional Convention*, vol. 2, 493. *Pennsylvania Constitutional Convention*, vol. 3, 159.

Virginia Constitutional Convention, 435. Delaware Constitutional Convention, 23.

who were in a poorhouse. In Delaware, Delegate Rodney believed that paupers were all “[t]hose who receive relief from the public, either within the Poor House or out of it.” A Virginia delegate asked if pauper was “intended to embrace all the non-freeholders, as I presume it is, for it is on account of their poverty, and the want of common interest with and attachment to the community, which is supposed to be consequent upon their state of poverty.” Delegates made sure to bracket out destitute veterans from paupers, though. Delegate Dickey of Beaver, for instance, “would not disqualify the pauper in the Bucks County poor house, who had been a Revolutionary soldier.”⁵² As chapter 2 shows, such efforts were not entirely successful.

Delegates reoriented the sentimental spectacle of lunatics and idiots and redirected it towards the parade of horrors that would unfold if that same population voted. They invoked common sense as their rationale and also as a tool for discerning who was a lunatic or idiot at the polls. Common sense also became the reason why no procedure was implemented for recognizing lunatics and idiots, as community knowledge and institutional residence would flush out those disreputable voters. While welfare state procedures uprooted people from their communities, the democratic state relied on independence and deep roots in the community as measures of respectability and determinations of disenfranchisement.

⁵² Delaware Constitutional Convention, 23. Virginia Constitutional Convention, 227. Pennsylvania Constitutional Convention, vol. 3, 168.

Outcasts from Voting

At the same time that voting expansion brought together white men of varying talents and economic circumstances in an uneasy sort of political equality, white male elites sought to maintain and reinforce restrictions on the suffrage against those considered undesirable, such as women and African Americans because of their perceived mental inadequacy. As a result, ideas about mental capacity for political citizenship were not only developed by state constitutional convention delegates, but also by suffrage activists who challenged their exclusion from the vote because of their race or gender.

The question of mental disability also arose under multiple guises in discussions surrounding woman suffrage activism. Anti-suffrage activists and doctors argued that women would suffer due to their biology if they overexerted themselves mentally by voting. Grace Goodwin contended: "woman lacks endurance in things mental...she lacks nervous stability." Neurophysiologist Charles L. Dana believed that woman suffrage would cause a twenty-five percent increase in female insanity and "throw into the electorate a mass of voters of delicate nervous stability." By contrast, suffrage activists marshaled statistics about the prevalence of insane asylums and other indicators of dependent status to contend that society needed female leadership. They argued that these indicators decreased or held steady in places where woman suffrage was allowed. The International Council of Women warned: "[W]hat you sow, that you shall reap." In this case, the harvest was a 155 percent increase in "the defective class,"

according to the 1880 U.S. Census. On the other hand, Clara Bewick Colby lectured at the National Woman Suffrage Convention of 1892 about the improving statistics on “crime, insanity and divorce” in Wyoming, which allowed women to vote. Elizabeth Cady Stanton directed: “Men and brethren, look into your asylums for the blind, the deaf and dumb, the idiot, the imbecile, the deformed, the insane; go out into the by-lanes and dens of this vast metropolis, and contemplate that reeking mass of depravity; pause before the terrible revelations made by statistics, of the rapid increase of all this moral and physical impotency, and learn how fearful a thing it is to violate the immutable laws of the beneficent Ruler of the universe; and there behold the terrible retribution of your violence on woman!” Mrs. Spencer said before the Washington, D.C. Committee, “Born of the unjust and cruel subjection of woman to man, we have in these United States a harvest of 116,000 paupers, 36,000 criminals, and such a mighty host of blind, deaf and dumb, idiotic, insane, feeble-minded and children with tendencies to crime, as almost to lead one to hope for the extinction of the human race rather than its perpetuation after its own kind.”⁵³

Numerous activists used phrases such as “children, insane, idiots, convicts, and women” as damning indictments of the assemblage of people unable to vote. Yvonne

⁵³ Baynton points out that multiple scholars of woman suffrage have noted this trend without subjecting it to a disability analysis or questioning why mental fragility should lead to disfranchisement. Baynton, *Slaves, Immigrants and Suffragists*, 566, 563, 564. International Council of Women. : *Report of the International Council of Women, assembled by the National Woman Suffrage Association Washington, D.C., U.S. of America, March 25 to April 1, 1888 : condensed from the stenographic report made by Mary F. Seymour and assistants, for the Woman's Tribune, published daily during the council.* Washington : R.H. Darby, printer, (1888), 275. Anonymous : *The National Woman Suffrage Convention; The American magazine.* Vol. 4, Iss. 2 (1892), 53. Stanton, *History of Woman Suffrage*, vol. 2, 719, 13.

Pitts writes that “[v]ictorian male intellectuals often grouped women, savages, criminals, and idiots together as ‘outcasts from evolution.’ All of these ‘outcasts’ were also denied suffrage on the grounds that they lacked the rationality and intelligence required for enfranchisement.” The point for the activists in bringing up these stereotypes was not to catalyze a movement to enfranchise all members of this group, but to point out the incongruity of linking women with these otherwise disreputable classes. The strategic use of such litanies appeared throughout the nineteenth century. In all variations, lunatics and idiots played a prominent role. Henry Ward Beecher claimed that “We permit the lame, the halt and the blind to go to the ballot-box; we permit the foreigner and the black man, the slave and the freeman, to partake of the suffrage; there is but one thing left out, and that is the mother that taught us, and the wife that is thought worthy to walk side by side with us. It is woman that is put lower than the slave, lower than the ignorant foreigner. She is put among the paupers whom the law won’t allow to vote; among the insane whom the law won’t allow to vote. But the days are numbered in which this can take place, and she too will vote.” In 1852, Lucy Stone lamented at the Woman’s Rights Convention that “married women, insane persons and idiots are ranked together” while “[t]he foreigner, the negro, the drunkard, are all entrusted with the ballot, all placed by men politically higher than their own mothers, wives, sisters and daughters!” Two years later, Elizabeth Cady Stanton told the New York Legislature that women were “moral, virtuous, and intelligent, and in all respects quite equal to the proud white man himself and yet by your laws we are

classed with idiots, lunatics, and negroes....” After the passage of the Fifteenth Amendment, the phrases changed form from “idiots, lunatics, and negroes” to “idiots, lunatics, foreigners, and convicts.” After Elizabeth Avery Meriwether illegally voted in 1876, she wrote: “when I tested the matter I was allowed to cast my ballot. Whether it was counted I cannot say. But counting my ballot was not important; what was important was to focus public attention to the monstrous injustice of including educated women with felons and lunatics as persons denied the right of suffrage.” In a hearing of the Women Suffrage Association before the House Committee on the Judiciary on January 18, 1892, Elizabeth Cady Stanton declared: “What we look forward to is part of the eternal order. It is not possible that forty millions of women should be held forever as lunatics, fools, and idiots.” A female letter writer to the *Chicago Daily Tribune* in 1895 bitterly called “criminals, idiots, the insane, paupers, aliens, minors, and women” the “Silent Seven.” The Woman Suffrage Year Book compiled lists of “adult citizens” disfranchised by state.⁵⁴

The early twentieth century saw much the same message. Belle Kearney sarcastically orated in 1900: “Good morning, sister. You taught us and trained us in the

⁵⁴ Yvonne Pitts, “Disability, Scientific Authority, and Women’s Political Participation at the Turn of the Twentieth-Century United States,” 24 *Journal of Women’s History*, no. 2, (2012), 49. Elizabeth Cady Stanton, Susan B. Anthony, Matilda Joslyn Gage, and Ida Husted Harper. *History of Woman Suffrage: 1876-1885*. Vol. 3 (Rochester, NY: Susan B. Anthony, 1881-1922), 53. Henry Ward Beecher, “The Advance of a Century. An Oration by Rev. Henry Ward Beecher,” (July 4, 1876). Lucy Stone, at the Woman’s Rights Convention in Syracuse, September 8, 1852, in Harper, the Life and Work of Susan B. Anthony, Vol. 1, 73-74. Elizabeth Cady Stanton’s Address to the Legislature of the State of New York, (February 20, 1854). Tennessee Women’s Suffrage Memorial, http://tnwomansmemorial.org/honored_women.html. “Women, Do You Want To Vote?” *Chicago Daily Tribune* (May 6, 1895), 3. The Woman Suffrage Year Book. (National Woman Suffrage Publishing Company, Inc. 1917), 168.

way we should go. You gave us money from your hard earnings, and helped us to get a start in the world. You are interested infinitely more in good government and understand politics a thousand times better than we, but it is election day and we leave you at home with the idiots and Indians, incapables, paupers, lunatics, criminals and the other women that the authorities in this nation do not deem it proper to trust with the ballot; while we lordly men, march to the polls and express our opinions in a way that counts." In 1904, Ida Husted Harper wrote that voting was so important that "[I]t is so considered, to such an extent that the privilege is not refused to any male citizen in the commonwealth, outside of the insane asylum and the penitentiaries. In 1910, Harriet Stanton Blatch led a parade of women holding banners that said "New York State Denies the Vote to Idiots, Lunatics, Criminals, and Women." An article in the *Concord Transcript* in 1911 observed that, "Intelligent and fair minded men everywhere are rallying to their support. They are beginning to think that the onus is resting pretty heavily upon them of having their mothers, wives and sweethearts rated along with Chinamen, idiots and insane persons when it comes to voting."⁵⁵

Activists also captured their outrage at being classified with those considered disreputable and stigmatized in artistic renderings. Suffragists distributed postcards

⁵⁵ Belle Kearney, "A Slaveholder's Daughter," *St. Louis Christian Advocate*, (1900), 111-112.

Ida Husted Harper, "Would Woman Suffrage Benefit the State, and Woman Herself?," 178 *The North American Review*, no. 568, (March 1904), 368-69. <http://theboweryboys.blogspot.com/2010/01/100-years-ago-women-cant-vote-but-they.html> *Concord Transcript*, July 29, 1911

linking educated, affluent white women with caricatures of lunatics, idiots, foreigners, and convicts.⁵⁶



I.1 Women suffrage postcard, undated

Henrietta Briggs-Wall, a Kansas suffragist, commissioned the most infamous of these images, “American Woman and Her Political Peers” in 1893. She displayed the painting at the World’s Fair in Chicago and sold postcards of the image.

⁵⁶ <http://womansuffragememorabilia.com/woman-suffrage-memorabilia/post-cards/>



I.2 "American Woman and Her Political Peers" 1893

The image depicts Frances E. Willard, a prominent suffragist, in sober and dignified dress surrounded by caricatures of a lunatic, idiot, Indian, and criminal. The *Alger*

County Republican said that “American Woman” would be to suffrage what *Uncle Tom’s Cabin* was to slavery. Briggs-Wall wrote in 1894 that, “It strikes the women every time. They do not realize that we are classed with idiots, criminals, and the insane as they do when they see that picture. Shocking? Well, it takes a shock to arouse some people to a sense of injustice and degradation.”⁵⁷

George William Curtis argued that not only are women grouped with lunatics and idiots, they are also worse off: “The boy will become a man and a voter; the lunatic may emerge from the cloud and resume his rights; the idiot, plastic under the tender hand of modern science, may be moulded into the full citizen; the criminal, whose hand still drips with the blood of his country and of liberty, may be pardoned and restored; but no age, no wisdom, no peculiar fitness, no public service, no effort, no desire, can remove from woman this enormous and extraordinary disability.” Kate Trimble complained that “And, ladies, that is not the worst of it, for it should be borne in mind that the hydra – the forty-million headed monster – which is placed over American women by their government and their ruler, is not the creation of the native-born white men only, but also of millions of men from the slums, prisons and fields of the entire world – the scum, the outcasts, the outlaws from all over the earth – negro ex-slaves, semi-barbarians from Africa, semi-savage Indians, Mexican ex-peons, Chinese ex-coolies, Russian ex-serfs, Roumanian ex-bandits, Turkish ex-brigands, penniless

⁵⁷ 1894 clipping, Kansas Historical Society; <http://www.kshs.org/kansapedia/cool-things-american-woman-and-her-political-peers-painting/10294>

Italians, Poles, Hungarians, and peasants from Ireland, Germany and Austria. And yet it grows worse, for our sex is not even equal, in the eyes of the Republic, with criminals and lunatics — for in nearly all the States, the lunatic, during his lucid intervals, has complete self-government, can vote and make laws for our women; and the criminal, when pardoned, has complete self-government, can vote and make laws for our women. No man is so low therein as woman, except the murderer *after* he is hanged. And it grows worse, for foreigners, aliens, in many States, even before they are citizens thereof, men who can scarcely speak a word of English, men who can scarcely spell in their native tongues, men who have no knowledge of law or government, men whose bodies are filthy almost to vermin, and whose minds are filled with every vice — if they declare intentions, have complete self government, can vote and make laws for our women. Women and dumb beasts are therein about upon a public equality and of all human things woman only is made a permanent outcast.”⁵⁸

Though suffrage activists brought up the disfranchisement of idiots and lunatics, it was not to push for their enfranchisement. Quite the contrary. When Lucy Stone delivered a proposal for woman suffrage in New Jersey in 1867, she proposed to enfranchise women and not idiots and lunatics “because they are incapable of rational choice and so cannot vote.” Henry Ward Beecher claimed that, “In a republic the ballot

⁵⁸ Stanton, Elizabeth Cady, Susan B. Anthony, Matilda Joslyn Gage, and Ida Husted Harper. *History of Woman Suffrage: 1876-1885*. Vol. 1 (Rochester, NY: Susan B. Anthony, 1881-1922), 288-89. Kate Trimble Woolsey, *Republics Versus Woman: Contrasting the Treatment Accorded to Woman in Aristocracies with that Meted Out to Her in Democracies*, (Grafton Press, 1903), 15-17.

belongs to every intelligent adult person who is innocent of crime. There is an obvious and sufficient reason for excluding minors, state-prison convicts, imbeciles and insane persons, but does the public safety require that we shall place the women of Connecticut with infants, criminals, idiots and lunatics? Do they deserve the classification?" Ida Husted Harper argued that "[C]hildren, lunatics, idiots and felons" rightly belonged "in the governed class, they are incompetent or unfit to govern; but what moral or constitutional right have men to put all women in this governed class?"⁵⁹

⁵⁹ Stone, *Woman Suffrage In New Jersey*. Stanton, *History of Woman Suffrage*, vol. 3, 53. Henry Ward Beecher "The Advance of a Century. An Oration by Rev. Henry Ward Beecher" (July 4, 1876).

Ida Husted, "Woman Suffrage a Right," 497. Multiple state memorializations of women suffrage use the litany of women, convicts, and lunatics. The *Berkeley Daily Planet* wrote in 2011 that the The Berkeley Political Equality League, under the leadership of Mary McHenry Keith, proposed placing a letter to the future in the cornerstone. "We...hereby commit the cause of Equal Suffrage for man and woman to the judgment of future generations, in the confidence that in after years whoever shall read these lines will wonder that so late as the year 1908 the women of California were political serfs; they were taxed without representation, governed without their consent, and classed under the law with idiots, insane persons, criminals, minors and other defective classes...We, about to die, greet you, the inheritors of a better age, men and women of the future Berkeley, equal before the law, enfranchised citizen; co-operating in all public service." Adding that Sarah Shuey, a Berkeley doctor, said: "Why do I believe in suffrage for women? Because I am a human being as well as a woman, and I believe in true democracy, and wish to get into the company of rational human beings before the law, and not to be classed with the idiots, imbeciles, the insane and criminals – because the city, State or nation is only a larger family, therefore it is inevitable that women should share in the responsibility for the normal development of the race."¹ The Tennessee Women's Suffrage Memorial is inscribed with the words of Elizabeth Avery Meriwether: "Inspired by news of Susan B. Anthony's attempted 1872 vote, Elizabeth Avery Meriwether dared to vote in the 1876 presidential election and reported..."when I tested the matter I was allowed to cast my ballot. Whether it was counted I cannot say. But counting my ballot was not important; what was important was to focus public attention to the monstrous injustice of including educated women with felons and lunatics as persons denied the right of suffrage." Steven Finacom, "Centennial of Women's Vote in California is 2011: Berkeley Celebrations Planned," *The Berkeley Daily Planet*, (March 1, 2011), 1. <http://www.berkeleydailyplanet.com/issue/2011-03-02/article/37399?headline=Centennial-of-Women-s-Vote-in-California-is-2011-Berkeley-Celebrations-Planned--By-Steven-Finacom> http://tnwomensmemorial.org/honored_women.html

As more white men were ushered into suffrage in the antebellum period, black people were pushed out of the vote. Although some free blacks were able to vote around the time of the Revolution, their numbers decreased between 1800 and 1850. Eric Foner observes that free blacks lost the right to vote precisely as suffrage for adult white males expanded: "In 1800, no northern state restricted the suffrage on the basis of race....But between 1800 and 1860, every free state except Maine" did so.⁶⁰

Opponents to black enfranchisement were quite vocal about voicing their beliefs that black people were incapable of political citizenship. William Yates's *Rights of Colored Men to Suffrage, Citizenship, and Trial by Jury: Being a Book of Facts, Arguments and Authorities, Historical Notices and Sketches of Debates--with Notes*, published in 1838, compiled multiple examples of state actors arguing that blacks were not mentally capable of the vote. For example, in the 1821 New York Constitutional Convention, delegate John Z. Ross of Genesee County argued that free blacks should not be able to vote because they were "a peculiar people, incapable, in my judgment, of exercising that privilege with any sort of discretion, prudence, or independence. They have no just conceptions of civil liberty. They know not how to appreciate it, and are consequently indifferent to its preservation. It is not thought advisable to permit aliens to vote; neither would it be safe to extend to blacks." In response to Delegate Peter A. Jay's support for free blacks having the vote, Delegate Briggs scoffed that "it was said that

⁶⁰ Wilentz, *Voting and the Spirit of American Democracy*, 38. Foner, *Voting and the Spirit of American Democracy*, 55, 57-58.

the right of suffrage would elevate them. He would ask whether it would elevate a monkey, or a baboon, to allow them to vote!" The *New York Times* protested that, "If we give the suffrage to a million of Southern blacks, we virtually supply them with the power of excluding one million of white men at the North from the polls. We cannot at once give them either the training or the intelligence, not simply to judge of the value of public measures, but to judge of the character of public men; and yet if this training and intelligence be not necessary, there is no good reason why the franchise should be withheld from children and idiots -- to say nothing of women." Abraham Lincoln also voiced a sentiment that the vote should be restricted based on intelligence. In a letter to Louisiana Governor Michael Hahn, Lincoln wrote "I barely suggest for your private consideration, whether some of the colored people may not be let in - as, for instance, the very intelligent, and especially those who have fought gallantly in our ranks." A few months later, in a public address, Lincoln reiterated that, "It is also unsatisfactory to some that the elective franchise is not given to the colored man. I would myself prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers."⁶¹

Antebellum popular culture reflected the idea that black people were and should be inferior political citizens because of their intelligence. Jean Baker argues that

⁶¹ William Yates, *Rights of Colored Men to Suffrage, Citizenship, and Trial by Jury: Being a Book of Facts, Arguments and Authorities, Historical Notices and Sketches of Debates--with Notes* (Merrihew & Gunn, 1838), 10, 32. "The Radicals and the Negroes Wendell Phillips' Plan," *The New York Times* (June 8, 1864). Roy P. Basler, (ed.), *The Collected Works of Abraham Lincoln*, Volume VIII, p. 399-405 (April 11, 1865).

“...popular culture’s stock black characters shared a common defect: they lacked the self-control of republican citizens. Present-minded and childlike, imitative and irresponsible, these white-imagined blacks required management.” According to white-designed imagery, blacks were “susceptible to political manipulation” and they often “cast[] blacks in the role of the uneducated and uneducable.” As a result, “by considering blacks incapable of self-government, first-generation voters, newly exalted by the award of the ballot, maintained a fictive egalitarianism based on privileges for white males.” Moreover, “In holding the public infantilism of blacks constant, Northerners denied what was allowed for in white aliens and male children – the possibility of political maturation – and thereby rejected environment as the source of the black debasement.”⁶²

The mid-19th century also saw the development of phrenology, the science of comparing brain and skull sizes to differentiate intelligence between races. Samuel Cartwright in his “Report on the Diseases and Physical Peculiarities of the Negro Race,” argued that blood and brain defects made blacks mentally inferior to whites: “There is a radical, internal, or physical difference between the two races, so great in kind, as to make what is wholesome and beneficial for the white man, as liberty, republican or free institutions, etc., not only unsuitable to the negro race, but actually poisonous to its happiness.” Doctors argued that biological differences rendered blacks mentally inferior to whites. While free blacks in the United States were considered particularly

⁶² Baker, *Affairs of Party*, 237-38, 42.

vulnerable to insanity, because they could not handle freedom, slaves were actually seen as *less* likely to become insane, because they were taken care of by their masters. For instance, the *American Journal of Insanity* published a note titled, "Exemption of the Cherokee Indians and Africans from Insanity" in 1846. Contrary to slaves, who according to doctors at the time were particularly susceptible to mental disease, the *Journal* wrote, "Insanity is rare we believe among the Africans." The proof? Cinque and other members of the famous *Amistad* uprising "visited the Retreat for the Insane at Hartford, Ct., and saw many of the patients there. They informed the writer of this article, that insanity was very rare in their native country. Most of them had never seen an instance." Dorothea Dix echoed this prevailing sentiment, observing "There is less maniacal insanity in the southern than in the northern States, which disparity various causes may be assigned. Two leading causes, obvious to every mind, is the much larger amount of negro population, and the much less influx of foreigners....Our hospitals for the insane are already receiving a vast population of uneducated foreigners; and most of these, who become the subjects of incurable insanity, present the most difficult and hopeful, because the least curable cases"⁶³

⁶³ "Carson, *Measure of Merit*, chapter 3. Samuel Cartwright, "Report on the Diseases and Physical Peculiarities of the Negro Race," *New Orleans Medical & Surgical Journal* 7 (1851), 715. Exemption of the Cherokee Indians and Africans from Insanity," *American Journal of Insanity* 1-2 (1846): 287. Dea Hadley Boster, *Unfit for Bondage: Disability and African American Slavery in the United States, 1800-1860*, Ph.D. Dissertation, University of Michigan, 2010; Andrew M. Fearnley, "Primitive Madness: Re-Writing the History of Mental Illness and Race," *Journal of the History of Medicine and Allied Sciences* 63 (April 2008): 245-257; Todd Lee Savitt, *Race and Medicine In Nineteenth- And Early-Twentieth-Century America* (Kent, OH: Kent State University Press, 2006); David McBride, "'Slavery As It Is': Medicine and Slaves of the Plantation South." *Magazine of History* 19 (September 2005): 36-39; Bruce R. Dain, *A Hideous Monster of the*

The most notorious antebellum controversy about black mental inferiority centered on the 1840 census. Here, statistics came back with a vengeance, not to fund social welfare projects, but to indict certain groups as inferior based on mental status. Starting in 1840, the U.S. Census tracked insanity by race, region and country of origin. Reference books such as *The World Almanac* published an annual table of “the defective classes” broken down by region, race, and immigration status along with charts that outlined new requirements and restrictions in areas such as voting. The initial 1840 census results fell in line with the sentiment that free blacks were susceptible to

Mind: American Race Theory in the Early Republic (Cambridge, MA: Harvard University Press, 2002); W. Michael Byrd and Linda A. Clayton, *An American Health Dilemma. Volume One: A Medical History of African Americans and the Problem of Race, Beginnings to 1900* (New York: Routledge, 2000); Katherine Bankole, *Slavery and Medicine: Enslavement and Medical Practices in Antebellum Louisiana* (New York: Garland, 1998); Todd Lee Savitt, “Slave Health and Southern Distinctiveness.” *Disease and Distinctiveness in the American South*. Todd L. Savitt and James Harvey Young, eds., (Knoxville: University of Tennessee Press, 1988): 120-53; Todd Lee Savitt, “The Use of Blacks for Medical Experimentation and Demonstration in the Old South,” *Journal of Southern History* 48 (August 1982): 331-348; John S. Haller, Jr., “The Negro and the Southern Physician: A Study of Medical and Racial Attitudes 1800-1860,” *Medical History* 16 (July 1972): 238-253; George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914* (New York: Harper & Row, 1971); Walter Fisher, “Physicians and Slavery in the Antebellum Southern Medical Journal,” *Journal of the History of Medicine and Allied Sciences* 23 (January 1968): 36-49; Herbert M. Morais, *The History of the Negro in Medicine* (New York: Publisher’s Co. Inc. for the Association for the Study of Negro Life and History, 1967); William Dosite Postell, “Mental Health Among the Slave Population on Southern Plantations,” *American Journal of Psychiatry* 110 (July 1953): 52-54; Michael Perman, *The Health of Slaves on Southern Plantations* (Baton Rouge: Louisiana State University Press, 1951); Todd Lee Savitt, *Medicine and Slavery: The Diseases and Health Care of Blacks in Antebellum Virginia* (Chicago: University of Illinois Press, 1978); Todd Lee Savitt, “Slave Life Insurance in Virginia and North Carolina,” *Journal of Southern History* 43 (November 1977): 583-600; Thomas S. Szasz, “The Sane Slave: An Historical Note on the Use of Medical Diagnosis as Justificatory Rhetoric,” *American Journal of Psychotherapy* 25 (April 1971): 228-239; William Stanton, *The Leopard’s Spots: Scientific Attitudes Toward Race in America, 1815-59* (Chicago: University of Chicago Press, 1960); Felice Swados, “Negro Health on the Ante Bellum Plantations,” *Bulletin of the History of Medicine* 10 (1941): 460-472. “Exemption of the Cherokee Indians,” 287. “Memorial of D.L. Dix, Praying a Grant of Land for the Relief and Support of the Indigent Curable and Incurable Insane in the United States.” 30th Cong., 1st sees., 23 June 1843, S. Misc. Doc. 150, p. 4

insanity. According to the results, northern blacks were ten times more likely to succumb to insanity than southern blacks. While the ratio of white southern and northerners were similar, 1 in 970 white people were insane or idiotic in the North and 1 in 945.3 in the south; for the black population, 1 in 162.4 northern blacks were insane or idiotic while only 1 in 1,558 southern blacks had the same afflictions. John Galt, the Eastern State Hospital Superintendent, proposed that the discrepancy was “perhaps owing not only to the less degree of mental cultivation, but much also to the absence of all cares for the future, the great depressing influence with the whites.” Free blacks are more insane “most probably [because] their degradation and misery leads to great tendency to vicious and dissipated habits.” Edward Jarvis, in an article in the *Boston Medical and Surgical Journal*, suggested that the commercializing economy of the North triggered insanity, and that slavery was protective mentally.⁶⁴ He then went through the data for the census and suggested that the results were incorrect. John Quincy Adams made a motion in the House of Representatives in February of 1844 to ask the secretary of state to investigate the errors in the returns, but a typographical error in his motion allowed the secretary of state, John Calhoun, to evade the motion. Adams produced a memorial from the American Statistical Association, written by Jarvis, that illustrated the census errors, but he did not receive the two-thirds vote in the House of

⁶⁴ Dain, *Disordered Minds*, 112. Patricia Cline Cohen, *A Calculating People: The Spread of Numeracy in Early America* (Chicago: University of Chicago Press, 1982), 192.

Representatives required. Concerned, Adams noted that, “the slave oligarchy will yet prevail to suppress this document.”⁶⁵

Adams proved prescient, as Southerners moved to utilize the incorrect results to defend slavery and argue for black inferiority. In 1844, Calhoun cited the census when defending the annexation of Texas as a slave state. The *Southern Literary Messenger* produced an exhaustive take titled “Reflections on the Census of 1840.” The magazine reiterated the “remarkable fact, that where slavery has been longest extinguished, the condition of the colored race is worse....Dreadful indeed are the evils, from whatever causes, that produce a maniac in every 34 of a population!”⁶⁶

The use of the census continued even after the scandal of 1840. Pro-slavery delegates to the 1864 Maryland Constitutional Convention utilized the 1860 census results to argue that free blacks had higher rates of criminality and insanity than enslaved blacks or southern whites. One delegate even compiled the following table as evidence for the record.⁶⁷

The effects of the fanatical, religious and politics isms of the North may be seen in the returns of the insane and idiot:		
	Free States.	Slave States.

⁶⁵ Ibid.

⁶⁶ Cohen, *A Calculating People*, 197-8. “Reflections on the Census of 1840” *Southern Literary Messenger* (June 1843), 9, 6.

⁶⁷ *Debates and Proceedings of the Maryland Reform Convention to Revise the State constitution [1851]*, 2 vols. (Annapolis: W. M’Neir, 1851), 641.

Insane.....	17,864	6,135
Idiotic	11,160	7,705
The deaf and dumb and blind, afflictions arising from natural causes, are more nearly equalized still, with a Northern preponderance:		
	Free States.	Slave States.
Deaf and dumb.....	9,722	5,355
Blind	7,293	5,342

After the Civil War, doctors maintained that the mental state of free blacks only disintegrated further. Dr. J.F. Miller, the Superintendent of the Eastern Hospital in North Carolina, told the Tri-State Medical Association in 1900 that “we have in our hospital rolls four hundred and fifty-two crazy negroes.” This was a new situation as “[m]any intelligent laymen of observation have informed me that they never knew a crazy negro prior to emancipation.”⁶⁸ He contended that, “the negro’s mind and body have both been damaged since the war by which he was made a free man.” “I am

⁶⁸ Dr. J.F. Miller, Superintendent of the Eastern Hospital, in North Carolina “Brain and Lung Degeneration in the Negro.” Transactions of the Second Annual Session of the Tri-State Medical Association of the Carolinas and Virginia, Feb 20-22, 1900 (Richmond, VA, The Williams Printing Company, 1900), 73.

confident," Miller said, "that the changed political and social relations of the negro is the prime cause of his increased physical and mental troubles.... Brought from Africa only a few generations ago, then a slave for several generations afterwards, this race had thrust upon it the high responsibilities of freedom, and also the higher functions of citizenship, the elective franchise, and thus was made literally a nation 'born in a day.'"⁶⁹ While there were some black people who were eloquent orators, Miller opined, "I do not think I am unjust to say the vast majority of the negro race have little capacity."⁷⁰ Miller's colleague Thomas Mays, a professor at the Rush Hospital for Consumption in Philadelphia, made much the same argument in his brochure, "Increase of Insanity and Consumption Among the Negro Population of the South Since the War." Like Miller, Mays cited the insanity statistics in the census to make his point that free blacks were mentally overwhelmed by the demands of "civilization."⁷¹

Their protests only amplified after the Civil War and the drafting of the Reconstruction Amendments. Andrew Johnson sent a report to the House of Representatives in 1867, noting that "it is admitted that the blacks of the south are not only regardless of the rights of property, but so utterly ignorant of public affairs that their voting can consist in nothing more than carrying a ballot to the place where they are directed to deposit it." He contended that to vote was the "highest attribute of an

⁶⁹ Ibid., 73, 71, 77.

⁷⁰ Ibid., 77.

⁷¹ Thomas Mays, "Increase of Insanity and Consumption Among the Negro Population of the South Since the War." 136 *The Boston Medical and Surgical Journal* (Cupples, Upham & Company, June 3, 1897), 539.

American citizen" and required guidance by "virtue, intelligence, patriotism, and a proper appreciation of our free institutions," characteristics that black citizens lacked. Johnson concluded that the vote "ought therefore to be reposed on none except those who are fitted morally and mentally to administer it well." In 1868, Representative James Brooks protested the enfranchisement of black Americans, calling them "inexperienced in all law-making, and more ignorant than our children." During the New York State Constitutional Convention in 1868, Delegate Murphy quoted from Thomas Jefferson that black people were subpar: "[c]omparing them by their faculties of memory, reason, and imagination, it appears to me that in memory they are equal to whites; in reason much inferior." Murphy concluded that though ignorant white people may vote, "they still have the power...to make observation and distinguish between those who are in favor of popular liberty and those who are not. But your black man, it is said, has not the capacity. He advances to a certain stage and there stops. He is not capable of doing anything more than imitating." Delegate Corbett, though, challenged Murphy on his intellectual standard for voting, quipping that "Why, sir, if the ability to solve a problem in Euclid were to be a test of one's capacity to exercise the elective franchise judiciously, the gentleman's party would be exceedingly select." Moreover, "the negro in America is a vast improvement on the negro in Africa. Owing to the kindness, and, I might add, the social laxity of Southern morals, he is favored with a generous infusion of Caucasian blood, and it is the representative of that element that we have in the Northern states." Because of the white blood in African Americans,

Corbett concluded, they had a chance to meet the intellectual requirements for American voting. During the Arkansas Constitutional Convention of the same year, Delegate Cypert also quoted Thomas Jefferson: “a republican form of government is based upon the virtue and intelligence of the people; hence the necessity of awarding to classes the elective franchise.” He questioned why white men aged twelve to twenty remained unenfranchised while they discussed enfranchising black people as those white teenagers were “known to be more intelligent, and to be better informed concerning our form of government.”⁷²

Black activists did not leave these sentiments unchallenged. In 1863, Frederick Douglass gave a speech titled “Present and Future of the Colored Race in America.” The speech centered on the denial of voting rights to black Americans. He ended, in a rhetorical flourish, by questioning the contemporary assumption that blacks did not deserve the vote because they were mentally unworthy. “I should like to know what constitutes inferiority and the standard of superiority,” Douglass asked. “Must a man be as wise as Socrates, as learned as Humbolt, as profound as Bacon, or as eloquent as Charles Sumner, before he can be reckoned among superior men? Alas! if this were so, few even of the most cultivated of the white race could stand the test. Webster was white and had a large head, but all white men have no large heads. The Negro is black and has a small head, but all Negroes have no small heads. What rule shall we apply to

⁷² Ibid. Journal of the House of Representatives of the United States, 1867-1868, TUESDAY, December 3, 1867. 18, 924. New York State Constitutional Convention, 255-57. Arkansas Constitutional Convention, 146.

all these heads? Why this: Give all an equal chance to grow.” Hosea Easton, in his *A Treatise on the Intellectual Character and Civil and Political Condition of the Colored People of the United States, and the Prejudice Exercised Towards Them*, published in 1837, proffered a strong rejoinder to contemporary beliefs that blacks were permanently and innately intellectually inferior. Though he was “perfectly willing to admit to the truth of these remarks” that blacks were intellectually inferior “as they apply to the character of the slave population,” he did not believe that this was a permanent affliction. Once blacks were not enslaved, their intellect was “subject to cultivation” and they could be as intelligent as whites. James McCure Smith, a graduate of the University of Heidelberg, published a series of lectures in *Colored American* magazine rebutting phrenological evidence of black inferiority.⁷³

Both black and female orators for suffrage reform took aim at those white men they considered unfit to exercise the vote while they themselves were categorically denied a political voice. Elizabeth Cady Stanton argued at Seneca Falls in 1848 that “to have drunkards, idiots, horseracing, rumselling rowdies, ignorant foreigners and silly boys fully recognized, while we ourselves are thrust out from all the rights that belong to citizens, it is too grossly insulting to the dignity of women.” She contended that “It is a consolation to the ‘white male, to the popinjays in all our seminaries of learning, to the

⁷³ Frederick Douglass, “Present and Future of the Colored Race in America,” in *African-American Social and Political Thought: 1850-1920* Howard Brotz, (ed.) (Transaction Publishers, 1966), 274. Hosea Easton, *A Treatise on the Intellectual Character and Civil and Political Condition of the Colored People of the United States, and the prejudice exercised towards them*, (1837), 23, 21. Richard D. Brown, *The Strength of A People: The Idea of an Informed Citizenry in America, 1650-1870* (Chapel Hill: University of North Carolina Press, 1997), 175.

ignorant foreigner, the boot-black and barber, the idiot – for a ‘white male- may vote if he be not more than nine-tenths a fool – took down on women of wealth and education, who write books, make speeches, and discuss principles with the savants of their age.” William Lloyd Garrison, at the Women’s Rights Convention in Cleveland in 1853 thundered that “So long as the most ignorant, degraded and worthless men are freely admitted to the ballot box,...it is preposterous to pretend that women are not qualified to use the elective franchise.”⁷⁴ Frederick Douglass intoned that, “The question is not whether the colored man is mentally equal to his white brother, for in this respect there is no equality among white men themselves.” When he visited the polls, Douglass said,

I saw ignorance enter, unable to read the vote it cast. I saw the convicted swindler enter and deposit its vote. I saw the gambler, the horse jockey, the pugilist, the miserable drunkard just lifted from the gutter, covered with filth, enter and deposit his vote. I saw Pat, fresh from the Emerald Isle, requiring two sober men to keep him on his legs, enter and deposit his vote for the Democratic candidate amid the loud hurrahs of his fellow-citizens. The sight of these things went far to moderate my ideas about the exalted character of what is called the body politic, and convinced me that it could not suffer in its composition even should it admit a few sober, industrious and intelligent colored voters.

Woman suffrage activists recounted the following scene when a woman attempted to vote and was refused: “Just before us a cart rattled up bearing a male citizen, who was too drunk to know what he was doing, or even to do anything. He was lying on his

⁷⁴ Elizabeth Cady Stanton, “Address of Mrs. Elizabeth Cady Stanton, delivered at Seneca Falls & Rochester, NY,” July 19th & August 2nd, 1848 in Stanton, *History of Woman Suffrage*, vol. 1, 188. William Lloyd Garrison, *Proceedings at the National Women’s Rights Convention, held at Cleveland, Ohio, on...October 5th, 6th, and 7th, 1853* (Cleveland, 1854), 56.

back in the cart, with feet and hands up, hurraing at the top of his voice. This disgusting, drunken idiot was picked up out of the cart by two men, who put a ticket into his hand, carried him to the window (he was too drunk to stand), shoved him up and raised his arm into the aperture; his vote received, he was tumbled back into the cart."⁷⁵

Tocqueville wrote that politics was the "only pleasure an American knows."⁷⁶ By the start of the Civil War, this sentiment was true for most white men in the United States, who were granted the right to vote. Left out of political citizenship were women, African Americans and others of denigrated status such as paupers and people with mental disabilities. After the Civil War, problems in asylums only accelerated. States continued to cut their funding as the populations within asylums swelled and moral treatment was replaced with purely custodial care. Social commentators continued to characterize lunatics and idiots as a social problem that drained communities of their financial resources as their institutions blighted the landscape. At the same time, voting became an increasingly important marker of political citizenship and American belonging. As elections became more fraught and litigious, people with alleged mental disabilities who attempted to vote were caught in election challenges as political parties harnessed constitutional prohibitions against lunatics and idiots voting to raise post-election litigation in courts and contested election hearings in Congress. Though judges

⁷⁵ Elizabeth Cady Stanton, Address of Mrs. Elizabeth Cady Stanton. Frederick Douglass, "Present and Future of the Colored Race in America," May 15, 1863.

⁷⁶ Alexis de Tocqueville, *Democracy in America*, Book 1, (1840), Chapter 14.

and congressional representatives struggled to make sense of legal and medical definitions of insanity and idiocy, these prohibitions persisted.

CHAPTER 2 -- BALLOTS FOR BULLETS? DISABLED VETERANS AND THE RIGHT TO VOTE

Uriah Carpenter expected to be able to vote. Like any other potential voter in Grand Rapids Township, Michigan in 1892, Carpenter registered, took an oath, and arrived at his polling place. But Carpenter's attempt to vote was rejected. His offense? His residence. Carpenter lived at the Michigan Soldiers' Home and the election officials believed that his residence in the institution meant he was not a legitimate citizen of Grand Rapids. Carpenter sued, claiming a violation of his right to vote. He thus became part of a stream of Civil War veterans who challenged their disfranchisement, and a member of a group that the legal system held could be denied the ability to vote.¹

"Old Hank Rose" planned to vote too. He used to live with Uriah Carpenter in the Michigan Soldiers' Home, but the Home expelled Rose for refusing to bathe. He then lived in an 8x10 square foot shanty with a "lame mule, pigs, and a dog, sleeping on some filthy rags in a corner." After he lost his shanty, "[f]or about two years he lived in a fence corner with a few boards to shelter him and a stove that furnished heat in the winter time." Finally, he took up shelter on "an old couch amidst a number of old

¹ Wolcott v. Holcomb, 23 L.R.A. 215 (Mich. Sup. Ct. 1893).

farming implements and under a roof, which is suspended in mid air by two old rockers on either side of it." Rose was an unwelcome resident to the town of Mason.

The *Detroit Free Press* recounted: "people in whose vicinity he has resided have always persisted in trying to make him be clean." At one point, "some young men carried him down to a lake where they dipped him in, scrubbed him good, shaving and cutting his hair. After he had donned a new suit of soldier's clothes, he looked real nice, it is said, but it did not last long."¹

Rose was an avid political enthusiast. He was once a Democrat; receipt of his full military pension of twelve dollars a month occasioned a switch: "Ever since he has been a staunch Republican, having been told that the G.O.P. secured the money for him. At that time he lived near Dansville, and the 'Demmys' there didn't like it a bit because of Hank's change of politics." The day before the election, some Mason townspeople "kidnaped [sic] the old fellow, carrying him at least twenty miles from home, where he was turned loose." Nevertheless, "[j]ust before the polls closed the next day, weary and footsore, old Hank limped into the voting booth by the aid of his faithful cane. He had walked most of the distance back." The next year, the townspeople tried again, this time

¹ "Young Men Scrub Dirty Soldier With Brooms," *Detroit Free Press* (August 16, 1906,) 10.

“blindfolding him, and zigzagging about the country.” Rose again managed to find his way back to the town in time to vote.²

According to conventional scholarly wisdom, none of this should have happened. Carpenter’s legal disfranchisement and the attempted guerilla disfranchisement of Rose ran contrary to a longstanding, multi-disciplinary consensus on the privileged place of disabled Civil War veterans in American law, politics, and society. Veterans are considered central to two major developments in U.S. history: the creation of the social welfare state and the democratization of voting. Many scholars have discussed the democratizing effects of war and the positive benefits given to veterans. In this chapter, I show that, contrary to what this consensus suggests, the very war injuries that the veterans experienced and the access to welfare benefits they received undercut their political rights. Because disabled veterans received benefits from the government, they were grouped with other citizens whose dependence disqualified them from the franchise.

The dominant scholarly account, spanning several fields, holds that Civil War veterans were immune from the discrimination otherwise associated with dependence and disability. A generation of political science and sociology scholars has contended that, although the United States lacks a robust welfare system, it nonetheless provides disabled veterans significant care. Linda Kerber’s work examines the other side of this phenomenon, as she shows how regard for military veterans privileged men over

² Ibid.

women for the awarding of government benefits. Other scholars focusing on gender and citizenship, poverty, and social welfare demonstrate how military benefits were a key part of structuring a two-tier benefits system that treated women as stigmatized dependents and men as worthy recipients of government aid. Law of democracy scholars also perceive that American culture and politics places veterans on a pedestal. Alexander Keyssar, in the most significant modern survey of the development of U.S. voting, and Pamela Karlan, whose article, "Ballots and Bullets: The Exceptional History of the Right to Vote," serves as the inspiration for this chapter's title, provide key examples. Both argue that war served as the primary catalyst of voting democratization as veterans successfully cited their service in seeking inclusion as political citizens. Disability scholars also characterize veterans as exceptional. While disabilities have generally inspired fear, pity, or revulsion, they argue, veterans have often benefitted from the equation of wartime disabilities with manliness, honor, and nationalism.³

This chapter challenges and complicates this consensus. War is not just an engine of democracy. It is a factory of death and disability. As it disables, it transforms.

³ See, e.g., Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (1995); Jill Quadagno, *Transformation of Old Age Security: Class and Politics in the American Welfare State* (1988). See, e.g., Linda Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (1999). See, e.g., Nancy Fraser and Linda Gordon, "A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State," 19 *Signs* 2, 309-336 (Winter 1994); Carole Pateman, *The Sexual Contract* (1988); Karen Tani and Felicia Kornbluh, *Siting the Legal History of Poverty: Below, Above and Amidst*, in *Blackwell Companion to American Legal History* (Sally Hadden & Alfred Brophy, eds.) (2013). Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (2009); Pamela Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 *Univ. of Cincinnati L. Rev.* 1345 (2002). As David Gerber, the editor of *Disabled Veterans in History*, has argued: war "valorizes disability by associating the wounded body with heroic and patriotic battlefield behavior. A disability becomes, in effect, a medal for service." David Gerber, "Introduction," *Disabled Veterans in History* (2012).

Veterans became dependent citizens as well as heroic ones. And their dependency carried off-detrimental political, social, and legal consequences. This chapter takes a fresh look at the perennial question of veterans and disability through an examination of the lived experiences of disabled Civil War veterans. It contests traditional accounts of Civil War veterans receiving preferential treatment in U.S. voting, politics, and welfare policy. And it does so by looking at the experiences of the veterans themselves. From that most important yet overlooked vantage point, it becomes clear that disabled Civil War veterans often encountered disgust and disdain. Courts disfranchised them, the political process sidelined them, and care providers offered them few effective treatments. Though such veterans did receive government benefits, these benefits brought with them the stigma of dependence and the sacrifice of independence, manliness, and racial privilege. Ironically, the state's recognition of veterans' through the provision of benefits is what led to their subsequent disfranchisement.

Through a historical examination of congressional hearings and state court cases on contested elections, this chapter is the first scholarly treatment of the hitherto unknown systematic disfranchisement of disabled Civil War veterans living in soldiers' homes. This chapter takes a closer look at the legal and historical record, and shifts focus from federal policy to local politics. Such an examination calls into question the privileged position of the disabled veteran. It asks how the largest concentration of disabled Civil War veterans fared in the arenas most central to political participation and civil legitimacy. It breaks new ground by showing that mental trauma rather than

physical injury was the typical Civil War disability, to a much greater degree than scholars have recognized. As existing scholarship reveals, some physically disabled veterans, especially those with amputations, were able to transform otherwise-stigmatizing disabilities into visible reminders of military honor. But these men were exceptional. Most disabled veterans had mental disabilities that others associated with weakness and dependence. Their previous military service did not save them, but rather made them more vulnerable.

These findings reveal that dependence, deservingness, and disability were all key concepts animating U.S. voting practice and law. This has been at best implicit in much prior work. The lack of express attention combined with misunderstandings of disabled veterans' experiences has left the relationships between these concepts and U.S. voting murky and muddled. This chapter presents a new vantage point and insights that foreground these concepts and more accurately delineate their relationships.

The jurisprudence on soldiers' homes illustrates the stakes involved in the attempts by soldiers' home proponents to distinguish their institutions from other charitable establishments. While these proponents wanted to utilize the advantages of disability — heroism, stoicism, manliness in the face of suffering, sympathy, support, and government resources — these elements were accompanied by the disadvantages of dependency — misunderstanding, distrust, disgust, a lack of full citizenship,

degraded manliness, and reduced racial privilege. Advocates sought to articulate veteran status and disability as markers of honor; but they fought an uphill battle against entrenched negative associations between disability and dependency.

Advocates' awareness of this challenge was reflected in their insistence that soldiers' homes be distinguished from other institutions of dependence such as poorhouses or lunatic asylums. They were right to fear such institutions would be conflated. In locales where soldiers' homes were established, it was not long before communities, politicians, and courts began to undermine veterans' status by declaring them dependent, and thus incompetent in a variety of spheres, especially voting. Courts disfranchised disabled veterans in accordance with a legal doctrine that prescribed such treatment for other dependents – thereby rejecting the distinction from "other" (less deserving) disabled people that veteran proponents presciently attempted to draw.

The conventional account contends that disabled veterans were exceptional in two ways: they received welfare benefits when others did not and they catalyzed the expansion of the franchise. This was particularly remarkable because access to welfare benefits is traditionally associated with loss of access to the franchise. The conventional account draws on the rhetoric of veteran advocates, but ignores the lived reality of veterans who suffered the same humiliations as other disabled citizens. While disabled Civil War veterans received benefits as a result of their service, they were not exempt from the general negative ethos toward dependent citizens, and how that ethos had consequences for dependent citizens' rights to vote. The soldiers' home population had

the wrong physical and mental ailments to allow them to escape the negative ethos towards dependent citizens. Amputees might escape deprecation as dependent citizens. The many more veterans who suffered from war trauma generally could not. Most importantly, they did not have their own distinctive legal status for political citizenship. As a result, they became part of a set of dependent disabled people rendered placeless and vote-less by state law. Their disability status “trumped” their military history, even when those disabilities were in the result of wartime service, and even when their dependence on the state was considered fair or just payment rendered by a grateful nation. To a far greater extent than we have previously appreciated, voting and dependence were tightly linked. Dependence trumped deservedness, even for veterans. Voting remained — and in some ways remains — the exclusive right of purportedly independent citizens.⁴

This chapter unfolds thematically and chronologically to illustrate that, notwithstanding the push to exempt disabled veterans from stigma, they did suffer culturally, socially, and legally. The chapter shows how disability status was important in three particular arenas: institutional dependence, public opinion, and legal disfranchisement. The first part describes the enactment and maintenance of soldiers’ homes. Next, I expose troublesome hidden aspects of disabled veteran life and soldiers’ homes in the community through revealing the complications of war trauma for both

⁴ It is important to note that this dependency was socially constructed to juxtapose these citizens with citizens who were ostensibly dependent and thus unworthy of the vote. *See generally* Martha Fineman, *The Autonomy Myth: A Theory of Dependency* (2005).

the soldiers and the communities of which they were a part. Finally, I relate the legal and legislative processes of veteran disfranchisement.

Creating the Home

Veteran advocates perceived at the outset the risk that disabled vets would be treated first and foremost as disabled and dependent, especially if they received government benefits. Aware that such associations would be detrimental to the former soldiers, these advocates tried to find a way to disassociate government relief from dependence and the broader stigma of disability. They sought to create new labels for functionally similar situations: relief became reward, and disability became a marker of heroism, sacrifice, and manliness.

The U.S. federal government developed a comprehensive system of compensating Civil War Union veterans with pension benefits. These benefits started as payments for injuries rendered during military service. Through the power of patronage democracy, they expanded into de facto old age pensions for nearly all white Civil War veterans and their dependents. The U.S. government also variously set up, ran, funded, and subsidized federal and state disabled-soldiers' homes. Explicitly distinguishing the homes from charitable institutions like poorhouses and asylums, backers characterized them instead as payment for service rendered during the war. That effort reflected the realization that the disabled-veterans homes did in fact

resemble charitable institutions, institutions that had a legal status and associations with dependency and disability that veteran advocates were keen to avoid.⁵

Appeals for an Asylum

As injuries mounted and the Civil War progressed, advocates for disabled veterans had two models to which they might turn to help those injured in war. One was the medical hospital for veterans. These had a long legacy in Europe. The other model was that of institutions that addressed particular needs: prisons, lunatic asylums, and poorhouses. While the latter institutions had many benefits, they had a serious drawback: they cast disabled veterans as primarily disabled and dependent rather than as primarily veterans. Unsurprisingly, veteran advocates worked hard to ensure that institutionalized disabled soldiers would reside in places more like military hospitals and less like poorhouses. They attempted to justify this special treatment on grounds of deservedness designed to insulate soldiers from association with dependence and disabled people in general.

While European countries created centralized medical hospitals for veterans -- the most famous being the Hôtel des Invalides in France, founded in 1670, and the Royal Hospital in England, founded in 1682 -- the United States did not develop medical institutions for disabled veterans until the 19th century. In 1811, the federal

⁵ Skockpol, *Protecting Soldiers and Mothers*.

government approved plans for construction of a Naval Home for Disabled and Decrepit Officers in Philadelphia, although the actual Home did not open until 1833. It was the first institution designed for veteran medical care in the United States.⁶ Congress established the Army Medical Corps in 1818. In 1827, Secretary of War James Barbour proposed an Army Asylum, following the European model.⁷

Similar proposals followed in 1833, 1837, 1840, 1841, 1844, 1845, 1846, 1848 (twice), and 1849. These appeals emphasized that providing medical care for veterans was a necessary consequence of waging war and an extension of military power rather than an expansion of the welfare state for dependent people. The nation was obliged to care for men who risked their lives and health in service of the country lest they become objects of charity and inmates of charitable institutions. In an 1833 address to Congress, Secretary of War Lewis Cass warned that a disabled veteran was “thrown on the charity of the community after devoting the best of his life to the service of his country.” In 1840, Major Robert Anderson, in a letter to his friend and former Illinois Governor John Reynolds, wrote that the veteran who “has no home resorts to the bottle, and dies a drunkard, or becomes a burden on the parish where he may be.” Major Anderson surveyed army regiments for hospital costs, calculated inmate costs from insane asylums and poor houses, and collected petitions for a Soldiers’ Home from Officer

⁶ Matthew Pinsker, “The Soldiers’ Home: A Long Road to Sanctuary,” 18 *Washington History* 1-2, 4-19 (2006).

⁷ Ibid.

Corps members; he subsequently sent all of his information to Congress before being deployed to the Mexican-American war. After General Winfield Scott captured Mexico City in 1847, he deposited the \$100,000 he demanded from the city's inhabitants into an account at the Bank of America, "with a terse note ordering the bankers to place all of the funds 'to the credit of the Army Asylum, subject to the order of Congress.' In a subsequent letter, Scott defended his unilateral actions, arguing that the 'sum' was 'in small part, the price of the American blood so gallantly shed' during the victory over Mexico." Senate Bill 392, approved on March 3, 1851, called for the creation of a Military Asylum to house veterans of the Mexican war and Army veterans. Though branches were planned in Washington D.C., Kentucky, Louisiana, and Mississippi, the only branch that was actually built was the D.C. Home, established in 1851.⁸

During the Civil War, several people warned of the impending need for institutional care for future veterans. General George Meade believed that the Army of the Potomac alone would produce 25,000 veterans with disabilities. Though most of these men "would be at present disinclined to avail themselves" of an institution, he thought the "number of applicants would increase after five years." In an August 1862 letter to Stephen Perkins, a Boston philanthropist and the associate manager of the U.S. Sanitary Commission, Henry Bellows, the Sanitary Commission President, warned: "If the Civil War lasted another year more than 100,000 Union troops of impaired vigor, maimed, or broken in body and spirit will be thrown upon the country." Bellows

⁸ Paul R. Goode, *The United States Soldiers' Home: A History of its First Hundred Years* (1957), 18-19, 10.

worried that “[l]iving within local or state ‘soldiers’ poorhouses these brave fellows will languish away dull and wretched lives. Asylums created by individual states, were often quarreled about and made the subject of party politics.” By contrast, federalized soldiers’ homes would continue “the military spirit and the national pride; to nurse the memories of the war, and to keep in the eye of the Nation the price paid for its liberties.” In January 1865, Frederick Knapp, the head of the Sanitary Commission Special Relief Department, wrote to Bellows: “Our statistics...and my own *eyes* resting daily on these men helpless or half helpless from disease or wounds, tell me that although it is to be scattered all over the country, yet there will be, in the aggregate, a vast amount of *suffering, & poverty & toil* among these men...unless some wise provision is made for them now, while the sympathies of the people are all alive.”⁹

Anderson, Knapp, and Bellows knew that soldiers returning from war had other resources besides soldiers’ homes. As discussed in chapter 1, the nineteenth century witnessed an explosion of institutions designed for those considered in need of social support. Lunatics, idiots, and other people with disabilities also had their own specialized institutions. Thus, veteran advocates had to make their appeals amidst a sea of appeals by similar benevolent societies and advocates who urged government support for paupers, lunatics, and others considered dependent. Veteran advocates

⁹ Report to the Secretary Of War on the Operations of the Sanitary Commission and upon the Sanitary Condition of the Volunteer Army 54 Kentucky Historical Society [Hereafter KHS]. Kelly, *Creating a National Home*, 22-24, 26, 30.

Ibid. at 48.

wanted to make sure, though, that veterans did not end up in the stigmatized institutions for non-veteran dependents, and they worried that the enthusiasm for supporting veterans in their own institutions would be short-lived. Veteran advocates attempted to set up a two-track system for benefits where veteran institutions would be an extension of military service, rather than a charitable benefit given to a dependent group. Advocates framed their appeals not in a language of dependence, but in a language of social contract, arguing that soldiers exchanged their military service for future caretaking by a grateful nation. This framed soldiers as ideal citizen/soldiers, rather than dependent men in need of charitable assistance.¹⁰ Veteran advocates successfully secured benefits for veterans following the Civil War. The U.S. Government offered pensions, employment preferences, free prosthetics, and soldiers' homes to Union veterans. These benefits were the result of intense lobbying, partisan politics, and the popular cultural images of disabled veterans that shamed the nation into taking care of them.¹¹

During the late 1860s, newspapers and magazines wrote numerous stories about the plight of poor or unemployed veterans. These veteran beggars were designated as the "deserving poor," as opposed to their non-veteran brethren, and their injuries were used to drum up sympathy and support. The *Philadelphia Public Ledger* observed that "Quite a number of men in soldiers' clothes have made their appearance in our

¹⁰ Karen Tani, *Welfare and Rights Before the Movement*, 122 *Yale L.J.* 314, 320 (2012).

¹¹ Skocpol, *Protecting Soldiers and Mothers*. Jalynn Padilla, *Army of 'Cripples': Northern Civil War Amputees, Disability, and Manhood in Victorian America* (Ph.D. Diss, Univ. of Delaware, 2007).

crowded thoroughfares, who, with arms in slings and support on crutches, hold out their hands to passers for alms." A *Flag of Our Union* editorial noted disapprovingly: "the common soldier who shouldered his gun and risked his life" was "compelled to go into the itinerant business, and turn his hand for a living by turning a crank."¹²

The Senate Committee Chairman Henry Wilson introduced a bill to incorporate a National Military and Naval Asylum on March 1, 1865. It passed with no debate two days later. The Eastern Branch of the National Asylum for Disabled Volunteer Soldiers opened in Togus Springs, Maine in 1866. The Board of Managers took care to open the branch before the 1866 presidential election. Two more quickly followed in 1867: the Central Branch in Dayton, Ohio and the Northwestern Branch in Wood, Wisconsin. Ultimately, the National Asylum for Disabled Volunteer Soldiers [NADVS] encompassed 13 branches. Over one hundred thousand veterans passed through the doors of soldiers' homes during the second half of the nineteenth century.¹³

Open for Business

¹² Ibid. *Philadelphia Public Ledger*, Aug. 9, 1865. "Editorial Little," *Flag of Our Union*, 24 (February 13, 1869): 104 quoted in Padilla, "Army of Cripples," 189.

¹³ Eastern in Togus, Maine [1866]; Central in Dayton, Ohio [1867]; Northwestern in Wood, Wisconsin [1867]; Southern in Hampton, Virginia [1870]; Western in Leavenworth, Kansas [1885]; Pacific in Sawtelle, California [1888]; Marion in Marion, Indiana [1888]; Roseburg in Roseburg, Oregon [1894]; Danville in Danville, Illinois [1898]; Mountain in Johnson City, Tennessee [1903]; Battle Mountain Sanitarium [for tubercular patients] in Hot Springs, South Dakota [1907]; Bath in Bath, New York [1929]; St. Petersburg in St. Petersburg, Florida [1930]. Initially, applicants needed a doctor certificate vouching for their disabled status before entering a Home. Convicted felons were unable to apply. Deserters, mutineers, or habitual drunkards were unable to gain admission "without evidence of subsequent service, good conduct, and reformation of character." Statutes at Large 9, secs. 4, 6, 595 (1851). An 1884 law allowed National Homes to admit elderly veterans without proof that their disabilities were directly linked to the war. Skocpol, *Protecting Soldiers and Mothers*, 140.

The veterans' advocates were successful in implementing their institutions, but the new system inspired a reaction from local communities that was akin to those that surrounded traditional dependency institutions: the desire to profit off residents rather than a desire to repay them. This tended to encourage local populations – or at least those in power locally – to understand the homes to a large degree in the very terms that veterans advocates had so desired to avoid: as housing dependent inmates that were sources of profit, rather than respect.

Once Congress approved the NADVS system, cities immediately began lobbying for a branch. Robert Schenck, the chair of the House Committee on Military Affairs, with Lewis Gunckel, a member of the NADVS, both lived in southern Ohio and lobbied aggressively for the Dayton branch. The Home Board of Managers began lobbying Congress annually for a West Coast branch starting in 1884. When Congress finally agreed to build a West Coast branch, the *San Francisco Bulletin* issued a call for applications. California civic and business leaders quickly assembled bids for their respective cities. Cheryl Wilkinson notes that these leaders “believed that placing the new [home] near their property would not only increase profits from their recently plotted town of Sunset, but also that it would ensure support for the new town’s economy with money, jobs, and a market for local goods.” Once the Board of Managers decided upon the Los Angeles region, the *Los Angeles Times* gloated: “The Managers Decide on Los Angeles. The Envious Northern Citrus Belt Left Out to Freeze. [There is] Nothing Else in the State So Good as Los Angeles County.” The article gushed: “The

location at this point of the home...is worth much to Los Angeles county. It will cause land in that section to advance in value, and the trade thrown into the way of our merchants will be considerable.”¹⁴

Localities also lobbied for soldiers’ homes operated by the state. In 1888, the federal government subsidized veterans in state soldier homes at a rate of \$100 per person annually. In Iowa, a senate commission had to narrow down the finalists for the Iowa Soldiers’ Home to nineteen candidates. The winner, Marshalltown, offered 128 free acres of land, a free extension of the city water mains, and cheap gas. Ohio narrowed down their final list for the site of the Ohio Soldiers and Sailors’ Home to fourteen localities before ultimately choosing Sandusky. When Representative Webber asked the Superintendents of the Poor in Michigan for a count of the soldiers in poorhouses, twenty-eight counties replied that sixty-two soldiers were living in poorhouses and eight received outside relief. A legislative committee was formed to locate a soldiers’ home.¹⁵ Four areas – Grand Rapids, Harbor Springs, Wyandotte, and Dearborn – lobbied the committee for the location, with Grand Rapids as the ultimate

¹⁴ Kelly, *Creating a National Home*, 110. Cheryl Wilkinson, “The Soldiers’ City: Sawtelle, California, 1897-1922,” *Southern California Quarterly* (2013), 194, 196. “The Soldiers’ Home. The Managers’ Decide,” *L.A. Times*, Dec. 8, 1887, 1. *The Branch Soldiers’ Home – Its Location*, *L.A. Times*, Jan. 1, 1888, 14.

¹⁵ *Ibid.*

winner. In 1886, Grand Rapids opened the Michigan Soldiers' Home that eventually housed Uriah Carpenter and Hank Rose.¹⁶

Confederate veterans did not receive federal funding for soldiers' homes, pensions, or prosthetics. The Association for the Relief of Maimed Soldiers [ARMS] founded in 1864, only had the funds to distribute legs. Eventually, most Southern states offered all three benefits, once the state governments were under Democratic control again, but these benefits were funded at a lower level than those for Union veterans. In 1905, fewer than 20% of Confederate veterans received government benefits, as compared to more than 80% of Union veterans. This disparity occurred despite the fact that fifty-eight percent of southern white men served in the military during the Civil War as compared to thirty-three percent of northern white men.¹⁷

Home Life

The veterans advocates' goals of making the homes a point of national pride and monuments to veteran deservedness was reflected in the initial design of the homes and their orientations to the public. Those running other institutions had similar goals and

¹⁶ Skocpol, *Protecting Soldiers and Mothers*, 141. Brian Donovan, "'Like 'Monkeys at the Zoo': Politics and the Performance of Disability at the Iowa Soldiers' Home, 1887-1910," *71 Annals of Iowa* 323, 327. Ohio Soldiers and Sailors' Home Directors Minutes, July 1, 1886 Ohio Historical Society [Hereafter OHS] at 3; Ohio Soldiers and Sailors' Home Directors Minutes, July 30, 1886, OHS, at 8. "The Legislature," *Detroit Free Press*, April 25, 1885, 4.

¹⁷ R.B. Rosenberg, "'Empty Sleeves and Wooden Pegs': Disabled Confederate Veterans in Image & Reality," in *Disabled Veterans in History* (2000), 207, 210.

pursued similar strategies. All of these advocates and supervisors were keen to evade the stigma of dependence that attached to their homes. The fact that soldiers' homes were similar in many respects to asylums and poorhouses did not help to distinguish them in the eyes of those already inclined to conflate them with other institutions.

Soldiers' Homes were designed as beautiful testaments to charitable beneficence and compensation for military service. The Dayton branch was described as "rival[ing] New York's *Central Park*," albeit Central Park with the inclusion of "a hundred buildings...and nearly four thousand soldiers, some armless, some lacking one or both legs, some with a stiff knee and others with some other defect, all wearing the army blue." Even the hospitals were designed with the public in mind. The Dayton hospital was "one of the most ornamented and imposing structures on the grounds."¹⁸

Homes were popular tourist attractions, especially during patriotic holidays and events such as Memorial Day Programs and Fourth of July Celebrations. The *Enquirer* wrote that "The sight of these 'war-worn veterans' all dressed in identical blue uniforms [on the 4th of July] strongly resembling the garb they wore as soldiers, 'some on crutches, others with one arm and otherwise mangled was a truly impressive spectacle.'" People were invited to picnic on the grounds, and attend Sunday sermons and holiday festivities, and public transportation was designed to link the homes with metropolitan areas. An estimated 60,000 people a year visited the Milwaukee branch of

¹⁸ The Soldiers' Home at Dayton, March 1878 PA Box 144 Folder 9 OHS, at 196, 97.

the NADVS. One hundred and seventy-five thousand people visited the Dayton branch in 1875. A special train ran hourly to the Wisconsin Veterans' Home from Waupaca during the summer. Illinois veterans celebrated at a reunion in Decatur and then immediately traveled to Springfield for the Soldiers' Home dedication. Captain Roys of Terre Haute gave an explicitly political speech. He concluded, "I hope the day will never come when the Union soldier will count no more in American politics than the men who tried to destroy their country."¹⁹

Disability and War

One of the challenges for the homes as they sought to establish themselves was that there was little in common between the rhetorically-useful image of the disabled veteran and the lived experiences of actual disabled veterans. Amputations were visible, dramatic injuries easily traceable to wartime service that were obviously the sole reason why men could not work. Mental illnesses were less visible, often disturbing rather than sympathetic, less easily traceable to wartime, and less obviously the sole reason a man was unable to provide for himself. Yet mental illness was a major disability among veterans. In seeking to preserve soldiers' homes as distinct from other

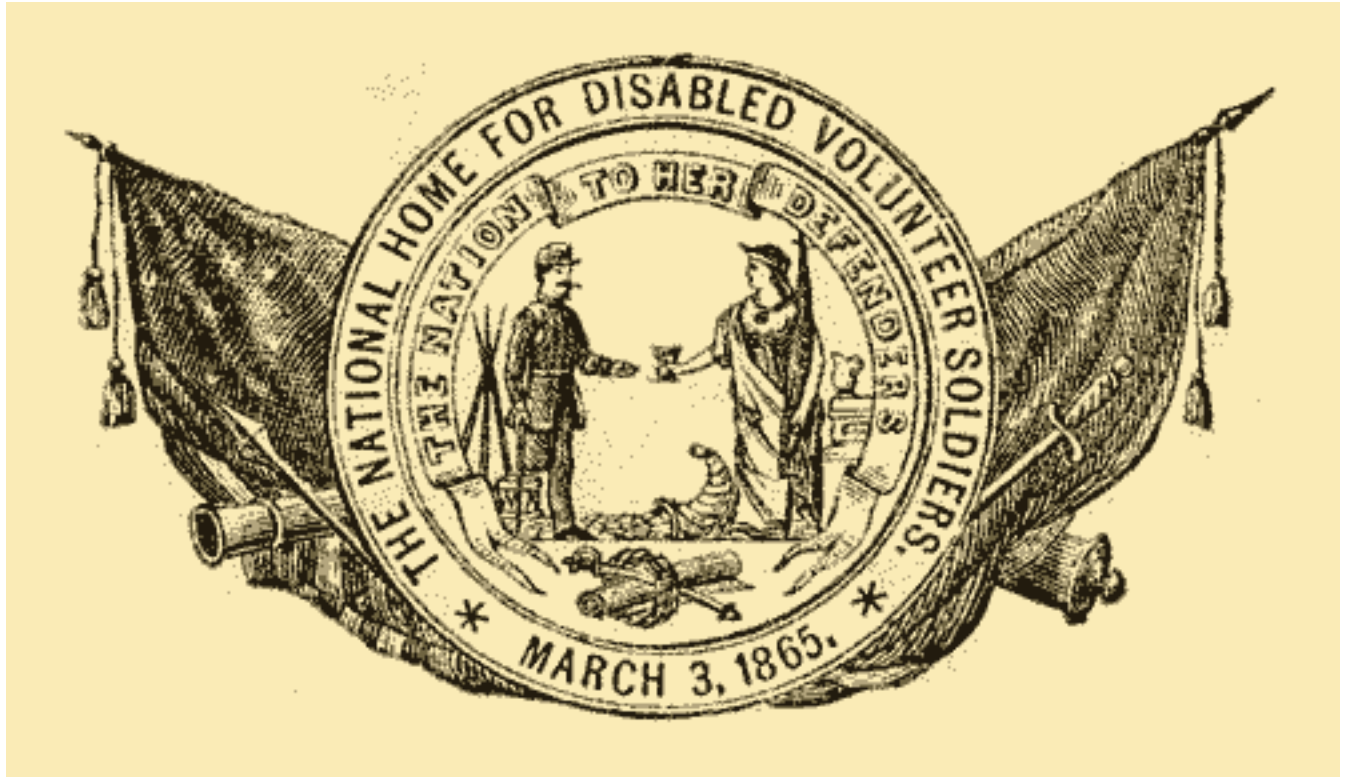
¹⁹ Hosea Rood and Chaplain E.B. Earle, *History of Wisconsin Veterans' Home, 1886-1926* (1926), 106, 117, 122; Kelly, *Creating a National Home*, 191, 104. James Marten, "Nomads in Blue: Disabled Veterans and Alcohol in the National Home," in *Disabled Veterans in History*, David Gerber eds., (2000), 278. The Soldiers' Home at Dayton, March 1878 PA Box 144 Folder 9 OHS, 196. "Reunion of Veterans," *Chicago Daily Tribune*, Oct. 9, 1886, 9.

charitable institutions, advocates and residents minimized the reality that recipients of veterans' services had much in common with recipients of other forms of aid. The fact that they were typically poor and mentally disabled, for example, did not fit the narrative that advocates sought to highlight.

War and Amputations

In the words of Steven A. Holmes, "war is the most efficient means for creating disabled people." In particular, scholars have emphasized the extreme brutality of the Civil War. The prototypical disabled veteran for the public was the amputee. As Jalynn Padilla notes "[f]or decades after the war's end, Americans' image of the Civil War veteran often included an empty sleeve or pant leg."²⁰ The amputation symbolized the sacrifice the individual soldier and the nation as a whole endured during the war. Significantly, the seal of the NHDVS is Columbia "offering succor to an old soldier missing his right leg."

²⁰ Padilla, *Army of Cripples*, 12.

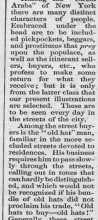


II.3 NHDVS Seal, 1865

This *Harper's Weekly* illustration, titled "Street Arabs," depicts a series of "types" of people present on the New York city streets, including a veteran with an amputation selling shoe-laces, a beggar woman, a juvenile boot-black, and a Chinese Candy Man.



"OLD HAT MAN."
NEW YORK "STREET ARABS."
Among the "Street Arabs" of New York are many distinct classes. One of the most numerous is the "old hat man," who carries a large bundle of hats on his back and holds a hat in his hand. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



"WOUNDED AT GETTYSBURG."
The man, who is a veteran of the Civil War, is seen in the streets of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



SHOELACE MAN.
The shoelace man is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



UMBRELLA DEALER.
The umbrella dealer is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



THE FOOT-BLACK.
The foot-black is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



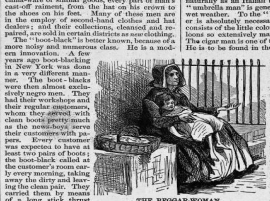
CHINESE CANDY MAN.
The Chinese candy man is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



THE BALLOON MAN.
The balloon man is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



"GLASS PUT IN."
The glass put in man is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.



THE BROGAR-WOMAN.
The brogar-woman is a woman of middle age, with a weathered face, and is dressed in a simple, practical manner. She is seen in the streets of the city, and is a common sight in the lower part of the city. She is a woman of middle age, with a weathered face, and is dressed in a simple, practical manner.



"FIVE FOR TEN CENTS."
The five for ten cents man is a man of middle age, with a weathered face, and is dressed in a simple, practical manner. He is seen in the streets of the city, and is a common sight in the lower part of the city. He is a man of middle age, with a weathered face, and is dressed in a simple, practical manner.

II.4 "Street Arabs" 1868

The text accompanying the illustration comments: "sympathy for his misfortune frequently proves important for his success." Indeed, the sign behind the man reads "Wounded at Gettysburg"; thus the man, as a street peddler, clearly perceives it as advantageous to classify himself and his injury as the product of military service, rather than ordinary misfortune. Strikingly, though, despite the fact that the men in these images are portrayed sympathetically, they are also placed next to socially marginal figures such as children, women, and Chinese immigrants, rather than alongside fellow

white men and citizens. Consequentially, though their wounds may have elicited sympathy, and extra alms, they also served to infantilize, feminize, and racialize the disabled veterans. Even positive sympathy was accompanied with the sting of dependency and impoverished social status.²¹

This emphasis on amputations, by both the contemporary public and by scholars,²² however, belies the actual distribution of injuries among Civil War soldiers. Of the 2.2 million Union soldiers, fewer than 30,000 lost a body part in the war. Most of those body parts lost were fingers or hands — that is, they were not extremely visible to the public eye. Far more dangerous to soldiers was disease. While 281,881 men received physical wounds during the war, there were 1,739,134 cases of diarrhea or dysentery among Union soldiers during the war, which caused 57,000 Union deaths. Two soldiers died of disease for every one soldier who died in battle. And far more common than physical injury was war trauma.²³

Scholars who study subsequent wars have given us a vocabulary for discussing mental trauma such as “shell shock,” post-traumatic stress disorder, and traumatic brain injury. Strikingly, though, scholarship that addresses war trauma for Civil War veterans is scarce. This chapter utilizes unexamined historical sources to argue that the Civil War veteran population was saturated with mental trauma. Following Diane

²¹ Skocpol notes that 17.95 Northerners were killed per thousand in the population in the Civil War; by contrast, 1.31 Americans per thousand died in World War I and 3.14 per thousand in World War 2. Skocpol, *Protecting Soldiers and Mothers*, 102.

²² Padilla, *Army of 'Cripples'*.

²³ *Ibid.*

Miller Sommerville, I will call it “war trauma” rather than using an anachronistic term such as post-traumatic stress disorder. During the war, soldiers faced debilitating conditions due to excessive marching, weather, poor dietary conditions, and disease. Men faced their neighbors and family members on the battlefield. Battles often included hand-to-hand combat. Prisoners faced even harsher conditions. Soldiers often spoke about the terrible conditions of war in their letters home. According to the *Medical and Surgical History of the War of the Rebellion*, compiled by the U.S. Surgeon General, 400 Union soldiers committed suicide, although scholars contend that this is a conservative estimate. A recent empirical study of Union Army recruits found that “The number of unique nervous ailments diagnosed in a veteran’s record range from one to twenty-one with an average of 2.51. Soldiers in companies with the highest company mortality experienced a sixteen percent increased risk of developing multiple nervous ailments.” Soldiers who were wounded had a 64% increased risk of developing war trauma as compared to non-wounded soldiers. Rufus Carpenter, for instance, who suffered from chronic diarrhea, developed nervous prostration and “paroxysms of melancholy.” He was unable to work or sleep. Lewis Chowning, who also had severe gastrointestinal illness, “walked the floor all night long, muttering to himself and threatening suicide.” After Michael Cassidy was shot he “seemed to be afraid all the time and tried to keep hidden from other people; his commitment ledger reads ‘fears impending danger.’ He

would lie out in the woods, even in inclement weather, to escape those imagined dangers.”²⁴

The Union Army had an official protocol for discharging men who indicated signs of “manifest imbecility or insanity,” though it was rarely used. Neither side could afford to lose men. In addition, men who manifested mental distress were often suspected of malingering - faking symptoms so they could be discharged and return home. As a consequence, mentally distressed soldiers were typically discharged only if they exhibited severe mental illness as well as violent tendencies. On the other hand, the Government Hospital for the Insane and other insane asylums faced overcrowding

²⁴ At this time, Eric Dean’s *Shook Over Hell* is the sole scholarly monograph that focuses upon Civil War psychological trauma. Eric Dean, *Shook Over Hell: Post-Traumatic Stress, Vietnam, and the Civil War* (1999), 102. Scholarship on the history of psychiatry and asylums in the nineteenth century US do not incorporate veterans or war trauma. Major books in this field that do not address Civil War psychological trauma include: Gerald Grob, *Mad Among Us* (2011); Lennard J. Davis, *The Disability Studies Reader* (2010); Thomas Szasz, *Coercion as Cure: A Critical History of Psychiatry* (2009); Gerald Grob, *Mental Institutions in America* (2008); Richard L. Lael, Barbara Brazos, Margot Ford McMillen, *Evolution of a Missouri Asylum: Fulton State Hospital, 1851-2006* (2007); David Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (2002); David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (2002); Lawrence B. Goodheart, *Mad Yankees: The Hartford Retreat for the Insane and Nineteenth-Century America* (2003); Edward Shorter, *A History Of Psychiatry: From The Era Of The Asylum To The Age Of Prozac* (1998); Judith Walzer Leavitt, Ronald L. Numbers, eds., *Sickness and Health in America: Readings in the History of Medicine and Public Health* (1997); Rosemarie Garland Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture* (1996); James Trent, *Inventing the Feeble Mind: A History of Mental Retardation in the United States* (1995); Steven Noll, *Feeble-minded in Our Midst: Institutions for the Mentally Retarded in the South, 1900-1940* (1995); Nancy Tomes, *The Art of Asylum-Keeping: Thomas Story Kirkbride and the Origins of American Psychiatry* (1994); Marc Micale and Roy Porter, *Discovering the History of Psychiatry* (1994); Andrew Scull, *Social Order/Mental Disorder: Anglo-American Psychiatry in Historical Perspective* (1989); Ellen Dwyer, *Homes for the Mad: Life Inside Two Nineteenth-Century Asylums* (1987); Richard Wightman Fox, *So Far Disordered in Mind: Insanity in California, 1870-1930* (1979). Diane Miller Sommerville, “‘A Burden Too Heavy to Bear’: War Trauma, Suicide and Confederate Soldiers,” *59 Civil War History* 59 4, (December 2013), 53. Dean, *Shook Over Hell*, 46-54. Chandra Manning, *What This Cruel War was Over: Soldiers, Slavery, and the Civil War* (2008), 459. There is no official report for the Confederacy. Lande believes that there were 5.25 suicides/month during the Civil War on the Union side. Judith Anderson, *Haunted Minds: The Impact of Combat Exposure on the Mental and Physical Health of Civil War Veterans* in J. Schmidt and G. Hasegawa, eds., *Years of Change and Suffering: Modern Perspectives on Civil War Medicine* 154 (2009).

even without the additional caseload of Civil War veterans. During the year of 1864-65, 83% of the Government Hospital inmates were military patients.²⁵

While mental distress and war trauma were prevalent, they were not usually labeled as such. Contemporary writers and doctors as well struggled to make sense of what they were observing. The major contemporary treatises on medical jurisprudence, for instance, did not mention war trauma. Nor did the *American Journal of Insanity* discuss war trauma for the entirety of the 19th century, despite their observations of mental disturbance linked to the war. The *American Journal of Insanity* noticed the large number of cases of “nostalgia” stemming from the war. John Harper, the President of the Western Pennsylvania Asylum, surmised: “the war and its consequences have given rise to a ‘startling increase of cerebral disease.’” Within the Western Judicial District of Pennsylvania alone, Harper hypothesized that 1,600 men suffered from insanity or dementia. George Palmer, Superintendent of the Michigan Asylum for the Insane, wrote, “the late civil war, no doubt, has contributed towards increasing the number of insane, as well as modifying the type of mental disease...a large proportion of the soldiers that served in the war, and lived to return home, were reduced in mental and physical vigor.” Dr. George Catlett, the superintendent of the Lunatic Asylum in St. Joseph, Missouri noted a significant increase in sensorial hallucinations he attributed to

²⁵ Sommerville, *A Burden Too Heavy to Bear*, 465, 492, 481, 480. An estimated 6.6 men/thousand were discharged for manifest imbecility or insanity. There was no official protocol on the Confederate side.

blood loss during military service. The *American Journal of Insanity* cited the frequency of brain injury and suicide among soldiers.²⁶

In addition to the soldiers' homes, veterans were committed to asylums and prisons. The Dayton Asylum for the Insane admitted forty-seven soldiers and sailors between the years of 1855 and 1877. The Superintendent's Report for the Dayton Asylum asserted: "The jails in such counties that have no infirmaries are crowded with poor, fettered lunatics." The Asylum noted its overcrowding problem, along with the admission of veterans who suffered from "war excitement" as a cause of their insanity. The President of the Ohio Soldiers and Sailors' Home lamented in 1888 that "at least six hundred old soldiers were now in the county infirmaries of the state." A Nashville newspaper wrote an article reporting that "people had gone mad by the dozens, necessitating an addition to the state asylum."²⁷

Asylum officials did not often discuss war trauma as a factor for veteran inmates. For example, "J. Chestnut Whitaker of the 2nd South Carolina Cavalry arrived at the

²⁶ See, e.g., *A Treatise on the Medical Jurisprudence of Insanity*, in 1873, *Contributions to Mental Pathology*, 1873, *Mental Hygiene*, 1863, all by Isaac Ray. *A Treatise on the Medical Jurisprudence of Insanity* (1853) by Edward Cox Mann has one example of a soldier who was "overworked and exposed to great heat" who thought his comrades were trying to poison him, 58. *Medical Inquiries and Observations: Upon the Diseases of the Mind* (1812) by Benjamin Rush has one example of nostalgia or homesickness in a British soldier in 1733, 111. In another case, the soldier was afraid and the fear caused a blister on his leg, 323. *American Journal of Insanity* 33 (1876-77), 214. *American Journal of Insanity* 24 (1867-68), 449. *American Journal of Insanity* 44 (1887-88), 159. *American Journal of Insanity* 34 (1877-78), 93. *American Journal of Insanity* 35 (1878-79), 219.

²⁷ Sommerville, *A Burden Too Heavy to Bear*, 324. Twenty-Fourth Annual Report of the Board of Trustees and Officials of the Dayton Asylum for the Insane yr. 1878 26, OHS. Dayton Hospital for the Insane Twenty-Third Annual Report 15, OHS (1877). Ohio Soldiers and Sailors' Home Directors' Minutes, July 7, 1888 25, OHS (1888).

asylum in Columbia in December 1863 'entirely deranged' and 'much disposed...to commit suicide.' Although Whitaker's case history indicated that he was a soldier during the first part of the war, caretakers ignored that when considering the likely cause of his insanity and suicidal tendency; instead; they fixed on his poor health." Doctors most often labeled war trauma as "irritable heart" or "cardiac muscular exhaustion," where the heart muscle was understood as physically damaged through traumatic exposure or "vicious habits" such as masturbation, excessive sex, or abusing coffee, tea, or alcohol.²⁸

Newspapers did publish some accounts of war trauma. The *Utica Telegraph* believed that a man was a "raving lunatic" because of his stay at Andersonville prison: "The scenes of that death-pen...had been seared into his brain as with a red-hot iron, til all else is burned out but that one terrible thing which is now within a living horror."²⁹ Mostly, though, articles noted symptoms of war trauma, such as alcoholism or violence, rather than its causes.

Once home, veterans had to deal with the debilitated state of their bodies and their memories of war largely alone. Ira Broshears "described himself as 'a cripple with a broken constitution hastening probably to an early grave.'" His disability "curbs the ambition, dampens the ardor and unmans the energy, thrusting him down soul and

²⁸ Sommerville, *A Burden Too Heavy to Bear*, 478, 466. Anderson, *Haunted Minds*, 151-52.

²⁹ Marten, *Sing Not War*, 182.

body to a treadmill existence in the great conflict of life." Men described themselves in pension applications as "broke down generally," or "I am a wreck."³⁰

Confederate veterans faced a particularly rough homecoming. Diane Miller Sommerville lists multiple reasons why Confederate veterans probably suffered more war trauma on average: a higher percentage of Confederate men fought and died than Union men; they were more likely to be ill-clothed and ill-fed; more military battles occurred in the South, leading to physical destruction of their homes and familiar places; veterans did not receive federal pensions; and finally, they lost the war and returned to a defeated homeland. Of 881,875 Confederate veterans, 220,469 were disabled by disease or injury. One veteran in South Carolina believed that "Southerners were driven to drink deeply by their misfortunes, and drunkenness (with all the family misery it entails) is deplorably prevalent to this day."³¹

Often veterans' mental distress manifested itself years after the war ended. One soldier, who was shot in the head at the Battle of Antietam in 1862, was discharged without incident for five years, until he became depressed and "finally developed an attack of melancholia." He was admitted to the Asylum at Utica in 1871, and again in 1873, where he died. Another former soldier, who suffered from rheumatism and chronic diarrhea, was also discharged without incident, until the 1870s, when he was

³⁰ Ibid. at 20. Larry Logue and Peter Blanck, *Race, Ethnicity, Disability: Veterans and Benefits in Post-Civil War America* (2010), 80.

³¹ 61% of white Southern males of military age [13 to 43] participated in the war as compared to 35 percent of Northerners. Sommerville, *A Burden Too Heavy to Bear*, FN 5, 322, 326. Rosenberg, *Empty Sleeves and Wooden Pegs*, 206.

“recognized by people generally as a lunatic.” He attacked a person at an auction and was transferred to jail and then the Asylum for Insane Criminals. George Palmer, the Michigan Asylum for the Insane Superintendent, warned that “it may be a period of months or even years of incubation elapses before the border-line, dividing sanity from insanity, is actually crossed. The patient...may be able to exercise a very fair degree of self-control at home, showing more or less irritability and lack of interest in his business, which are attributed to imperfections of character, rather than the real cause – mental disease. Suddenly, from some trivial circumstance, as attending a series of meetings, or receiving a slight shock to the nervous system, the patient becomes maniacal and difficult to care for, and consequently is at once sent to the asylum.”³²

As the previous examples suggest, some veterans resorted to violence, especially against family members. Eric Dean writes that “[u]nder the delusion that they would at any moment be attacked and killed, many of these Indiana veterans kept weapons at their side for protection – and this ten, twenty, and thirty years after the end of the Civil War.” In Dean’s sample of Indiana veterans, “40 percent attempted or committed violent acts while another 21 percent threatened violence.” Jacob Fink “fortified [sic] his house with himself and a Navy revolver...delusion that he is holding a fort in state of siege. Fort being his own house.” William Guile would go through his house in the middle of the night with an axe and was subject to “to ‘wild spells,’ [which] so alarmed

³² *Reparation of Brain-Tissue, American Journal of Insanity* 32 (1875-76), 491-92. *American Journal of Insanity* 32 (1875-76), 180.
American Journal of Insanity 44 (1887-88), 160.

local townsfolk that they on one occasion sent out the sheriff to tie him up and forcibly confiscate the revolver.” Of the thirty-five veterans in the Milledgeville asylum between 1865 and 1875, twenty-six “were described as violent, as very violent, or as having attacked or assaulted persons, often family members.” In 1865, veterans engaged in large brawls and looting in New York and Washington, D.C.³³

Families were quite reluctant to commit their family members. James Payne was committed 4 years after “his mind became affected” by the war and after repeated attempts to kill his father. William Wilkinson, the Northwestern Branch bandmaster, murdered his wife Maggie before killing himself. Wilkinson had lost a leg in the war and was frequently drunk thereafter. On January 12, 1880, according to a *Milwaukee Sentinel* article, “William had complained to his friends that [his wife] Maggie had slapped him and threatened to hide his wooden leg so he could no longer go out drinking.... he returned to his home, where he apparently discovered his wife writing a good-bye note, which ended ‘I can[not] live this life an[y] longer, four it gets sours in[stead] of beter.’ William...then shot her...before ending his own life of discomfort, guilt, and drunkenness.”³⁴

While some men became violent, others withdrew or committed self-injury. In Eric Dean’s Indiana sample, fifty-one percent of the veterans attempted or completed

³³ Dean, *Shook Over Hell*, 102, 325..Padilla, *Army of ‘Cripples,’* 36.

³⁴ Padilla, *Army of ‘Cripples,’* 326. Marten, *Sing Not War*, at 89-90.

suicide or were considered suicidal. Diane Miller Sommerville's sample noted that one-third of the Milledgeville veterans were hospitalized as suicidal. The *American Journal of Insanity* calculated that the rate of suicide among veterans was five times higher than for men without military service.³⁵

To a certain extent, the pension system recognized the psychological trauma emanating from the war. Psychological disorders were among the covered maladies, although veterans were more successful with their pension claims if they also linked psychological disorder to a somatic affliction. Local Grand Army of the Republic posts spent \$500,000 for temporary relief of veterans in 1884. "When that help ran out," James Marten writes, "veterans went 'to the county or city authorities and [tried] to get into the hospitals, poorhouses, homes for the aged, or other public institutions.' Many were turned away there, too, and some committed suicide."³⁶

Eventually, many of these veterans made their way to soldiers' homes, often after exhausting their family support and resources. While soldiers' homes were supposed to transfer insane veterans to asylums, far more often the veterans stayed at the Homes. Transfer required an onerous procedure of a certification of insanity by the Home surgeon, and then the inmate had to be escorted to the asylum with two guards. On the other hand, by retaining insane veterans, soldiers' homes could keep the lucrative pension of the inmate. It was also politically unpalatable to jettison a veteran

³⁵ Marten, *Sing Not War*, 330. *American Journal of Insanity* 42 (1885-86), 544.

³⁶ Dean, *Shook Over Hell*, 147, 149. Marten, *Sing Not War*, 171.

from his home. The Commandant of the Ohio Soldiers and Sailors' Home objected to the practice of discharging insane veterans and "to cast them helpless in the world, only to drive them into the infirmary from which this Home was instituted to rescue them." The Colorado Soldiers and Sailors' Home built a separate insane ward and proudly reported that "[w]e have now established an insane ward, which enables us to take care of alcoholic and insane comrades, instead of sending them to the Insane Asylum in Pueblo." While the Iowa State Legislature's visiting committee argued that mentally traumatized veterans should be refused admission to the Iowa Soldiers' Home, Dr. Hamilton P. Duffield, the surgeon at the Home, pushed for an insane ward, protesting that "harmless but incurably insane" veterans were financially lucrative for the Home. His reports were filled with descriptions of them, as they "daily" were admitted to the Home.³⁷

There is No Disguising It, Boys: The People are Afraid of Us!

³⁷ Report of the Board of Managers of the National Asylum for Disabled Volunteer Soldiers for the Year 1871, Congressional Serial Set, U.S. Government Printing Office, 1872, 8. Dean, *Shook Over Hell. An Act To Provide For The Disposition Of Inmates Of The Ohio Soldiers' And Sailors' Home Who May Become Insane*, 15-16, OHS; *Laws of Ohio Relating to Bounties, Memorials, Monuments, Relief Fund and Soldiers' Home*, OHS (1903) Ohio Historical Society; *Statutes Of Kentucky Relating To Lunatic Asylums And The Care Of The Insane And The Bylaws Of Eastern Kentucky Lunatic Asylum*, KHS (1883). The Commandant of the Ohio Soldiers and Sailors' Home suggested legislation so that the Home would keep the pension but transfer particularly troublesome veterans to an asylum. This proposal was not considered by the Ohio legislature. Commandant's Monthly Report to the Board of Trustees, Ohio Soldiers and Sailors Home, 1889-1936 Box 1 Folder 1, OHS (1889); Commandant's Monthly Report to the Board of Trustees, Ohio Soldiers and Sailors Home, 1889-1936 Box 1 Folder 1, 50 OHS (June 16, 1889). Donovan, *'Like 'Monkeys at the Zoo'*, 341-46. Commandant's Monthly Report to the Board of Trustees, Ohio Soldiers and Sailors Home, 1889-1936 Box 1 Folder 1 Commandant's Report 1889 28, OHS (March 1889). Colorado Soldiers and Sailors Home Biennial Report 1911-1912 32, OHS.

Despite Captain Roys's hope that society would not forget the debt owed to its veterans, the outlook on soldiers' homes was sometimes negative. Though political consensus spurred the development of the homes and conferral of veteran benefits, this government largesse came increasingly under fire as Democrats challenged Republican power through charges of political corruption. Soldiers' homes were subject to multiple instances of investigations, with politicians charging extensive mismanagement.³⁸ Though veteran advocates continued to encourage language that linked war service with the veterans' aid instead of relying upon the language of generalized charity and dependence, this connection to the Civil War dissipated as time passed, just as Civil War veteran advocates had feared.

The actual disabilities that predominated in the homes gave rise to the spectacles and accompanying conflicts that made the residents of soldiers' homes indistinguishable from residents of other charitable institutions in the eyes of their neighbors. Veterans saw that in place of the rewards and gratitude that they hoped for, they instead were objects of disgust.

The population served by the homes caused mixed emotions. Because veterans went to the homes largely as a last resort, the veterans in the homes were often men who lacked family support or financial resources. Like the population of paupers and lunatics, soldiers' home residents were disproportionately white, foreign-born immigrants. For instance, eighty-eight percent of the men in the Dayton branch were

³⁸ Congressional Edition, Volume 23290, U.S. Government Printing Office, (1885).

born outside of the United States. In Bellows' final report for the Sanitary Commission in December of 1865, tellingly titled "Provision Required for the Relief and Support of Disabled Soldiers and Sailors," he concluded that the majority of men who required an institution were foreign-born soldiers, mostly from Ireland and Germany. Native-born soldiers, by contrast, had a "spirit above dependence" and were the "objects of a proud and tender domestic or neighborly care, and withdrawn from public view, as it is desirable they should be." For those native-born men, he advocated pensions instead of institutions. *Harper's New Monthly* wrote in 1886 that "Among...the general public, an 'impression has prevailed that by reason or temperament and native precedent' the foreigners within the Home were 'more ready to accept a condition of dependence than our own countrymen.'" Xenophobia led even veteran advocates to view their charges as particularly susceptible to dependence.³⁹

Soldiers' homes were also suspiciously viewed as potential centers for vice. Localities feared that the population of untethered men would usher in disreputable habits. The biggest problem faced by administrators in every home -- state or federal -- was alcohol. Inebriated men froze to death during the winter. Drunken men were put in restraints, committed to insane wards, fell out of windows, and tripped over sidewalks. Administrators at every branch gathered together at the Milwaukee branch in 1894 to address their shared alcohol problem. Commandant John Keatley, in his first biennial

³⁹ Rev. Thomas H. Pearne, *The Soldiers' Home at Dayton* 198,72, 135 OHS. The National Branches also admitted black veterans, although very few actually lived at the Homes and when there they were segregated in separate living and dining facilities.

report to Iowa legislators, objected that many persons, “on account of the intemperance of a few, are apt to characterize the entire membership of a soldiers’ home as a ‘lot of drunken bums.’” The Iowa Soldiers’ Home Surgeon, G.W. Harris, declared in 1893 that ten percent of the home residents were heavy drinkers who staggered around Marshalltown in their uniforms. These men “taint[ed] the reputation of the Home.” M.F. Force, the Commandant of the Ohio Soldiers and Sailors’ Home, complained in a special report that during “trips to bring in men who were living in the road, over a dozen perished of exposure before they were found. Men in uniform swarmed the streets of Sandusky begging for alms. The saloons in the city were supplied with Home table ware, and on the washing days, the clothing lines in neighboring farms were burdened with Home blankets.” A one-mile-limit law prohibited the selling of alcohol within a mile of a soldiers’ home. The one-mile-limit law was ineffective, as the inmates just walked or hitched rides to buy alcohol.⁴⁰ Skid row areas selling alcohol, sex, gambling, and other vices proliferated around homes.

Alcoholic veterans were treated with substitutes, such as codeine, heroin, or chloral hydrate. Wounded veterans also received morphine and other opiates for pain. Distressed veterans were administered opiates as sedatives. Leonard Griffith could not sit in front of an open door or window because he was in “constant dread of being

⁴⁰ Marten, *Sing Not War*, 110. Marten, *Nomads in Blue*, 281. Donovan, ‘Like ‘Monkeys at the Zoo’, 333-34. M.F. Force, Special Report on the Subject of Pensions at the Ohio Soldiers and Sailors’ Home 7, OHS (1896). “Rejoicing in Victory: Celebration of the Passage of the One-mile-limit Law,” *Washington Post*, (Mar. 9, 1891), 6. “Vital Campaign Issues,” *L.A. Times*, (Oct. 1, 1900), 19.

killed." He was prescribed sedatives for sleep. Another veteran believed that people were trying to kill him and "begged for protection." He also received sedatives. Unsurprisingly, opium abuse was rampant among the veteran population. An article in *The Independent Magazine* estimated that there were 80,000-100,000 opium eaters in the United States; they were prevalent, among other populations, in "disabled soldiers." Another study referred to morphine addiction as the late nineteenth century "army disease."⁴¹

Not a Charity, But a Home

Home officials understood the problems that they faced and sought to mitigate them by making further moves to distinguish their homes from other charitable institutions. Ironically, this may have been counterproductive, as other institutions were making similar moves. Moreover, their paternalism caused discord among the resident population.

Veterans faced strict rules while under the management of Home supervisors. The War Department extensively regulated NADVS inmates. Inmates were required to surrender their pensions to Home supervisors. The inmates were organized into companies. They were not permitted to leave the premises except with explicit

⁴¹ "Vital Campaign Issues," *L.A. Times*, (Oct. 1, 1900), 19. Dean, *Shook Over Hell*, 102. David T. Courtwright, "The Hidden Epidemic: Opiate Addiction and Cocaine Use in the South," 1860-1920, *Journal of Southern History* 49 (February 1983), 57-72. Marten, *Sing Not War*, 111.

permission. The War Department furnished uniforms for the inmates that they were required to wear; they often had to become bigger as time went on because the inmates grew “stouter and more corpulent.”⁴²

Despite their intensive paternalism and strict rules, home officials emphasized the *home* aspects of the institutions in an attempt to contrast them to other charitable institutions. As the Board of the NADVS contended: “The general spirit of the laws establishing these homes exhibit the intentions of our people. They are to be homes for the country’s defenders, not asylums for the helpless poor whom society by the laws of its existence is bound to support.” As described by the Board of Managers, “the Home is neither an [sic] hospital nor alms-house, but a home, where subsistence, quarters, clothing, religious instruction, employment when possible, and amusements are provided by the Government of the United States. The provision is not a charity, but is a reward to the brave and deserving.”⁴³ Home reports spoke of the cozy living quarters stocked with reading supplies, picnics on the lawns, and Sunday sermons. The expectation was that men would stay at the homes for the rest of their lives, die, and become interred in the cemeteries located conveniently next door.

Thus, home administrators were particularly adamant to characterize the soldiers’ homes as homes rather than charitable institutions like asylums. In 1859,

⁴² M.F. Force, Special Report on the Subject of Pensions at the Ohio Soldiers and Sailors’ Home, OHS, at 4. National Home for Disabled Volunteer Soldiers Charter and By-Laws, Box PA 73 Folder 34, OHS, (1873), at 19. Annual Report of the Board of Managers of the National Home for Disabled Volunteer Soldiers for the Year 1875, OHS, at 8.

⁴³ Investigation of the National Home for Disabled Volunteer Soldiers, March 3, 1885, Congressional Edition, Volume 2329, U.S. Government Printing Office, 1885, p. 12. Marten, *Sing Not War*, 15.

Congress changed the name of the Military Asylum to the Soldiers' Home and the inmates became residents. In 1873, the National Asylum for Disabled Volunteer Soldiers changed to the National Home for Disabled Volunteer Soldiers [NHDVS]. The Governmental Hospital for the Insane reported that "the more intelligent and sensitive of the patients" referred to the hospital as St. Elizabeth's "in order to avoid the use, both by themselves and their friends, in speaking and writing, of the word insane, which forms a part of the legal title of the hospital." The hospital eventually formally changed its name to St. Elizabeth Hospital. These changes were designed as destigmatizing measures to distance soldiers' homes from other charitable institutions. While scholars of soldiers' homes generally emphasize that soldiers' homes were distinct from other charitable institution, asylums also emphasized similar elements of paternalistic and familial management and underwent similar name changes in attempts to lower stigma.⁴⁴

Like Monkeys in a Zoo: Veterans and Disgust

Despite enthusiasm and intense lobbying for soldiers' homes, there was an undercurrent of unease about them that emanated from localities, politicians, and courts. The attempts to distinguish homes from charitable institutions were a failure, at

⁴⁴ Ch. 51, U.S. Stats. At Large (vol. 17, p. 417), approved January 23, 1873, provides for the change of the corporate name from "The National Asylum for Disabled Volunteer Soldiers" to "The National Home for Disabled Volunteer Soldiers." *American Journal of Insanity* 26 (1869-70), 95-96. Marten, *Sing Not War*; Kelly, *Creating a National Home*. Tomes, *The Art of Asylum-Keeping* (1984), 226.

least in the eyes of local populations. This trend was aggravated by homes facing challenges similar to other institutions: political gamesmanship from the political parties, charges and investigations of management and corruption, and the implication that the homes were beneficiaries of the same patronage system as other charitable institutions.

The homes were perpetually overcrowded and their administrators asked for more funds on a regular basis. The Wisconsin Veterans' Home was "immediately overwhelmed" with applications, starting in the first year of operation. At the Iowa Soldiers' Home, the Commandant reported that "[t]he present indications are that the Home will be filled to its full capacity during the year 1888." It had just opened the previous year.⁴⁵

Although scholars assert the public viewed the wounds of disabled veterans positively, many of the veterans themselves believed they were regarded with disgust. Some veterans viewed their public attention cynically. A veteran in the Southern Branch in 1889 said that the Home "was a show place for visitors, and we are as much an exhibition here as monkeys at the Zoo." James Marten recounts: "...[a] former inmate of the Milwaukee home wrote to the local newspaper, 'Some ladies who visit the Home look upon soldiers as a blot upon our fair landscape.' On one occasion an 'exquisite being' visited the grounds and declared that it was 'too, too lovely. If they would only

⁴⁵ *American Journal of Insanity* 32 (1875-76), 319. Rood and Earle, *History of Wisconsin Veterans' Home*, 41. Donovan, Like 'Monkeys at the Zoo, 326.

take those disgusting soldiers away, it would be too heavenly." Despite enthusiasm towards supporting veterans, few were actually hired for jobs, especially in the private sector. An October 1865 article in *Leslie's Illustrated* noted the "hard but truthful fact that there is a prejudice in the minds of employers against returned soldiers." A veteran calling himself "New Hampshire" wrote into the *Soldier's Friend*, lamenting that "There is no disguising it, boys; the people are afraid of us!" The magazine received multiple letters from veterans recounting their experiences of unemployment. Veteran Henry Vail in the *Washington Post* charged that "The talk of veneration for the veteran is a sentiment, but the fact is that a notice is posted in all the departments and bureaus that no soldier need apply for work or anything else. He is told to get on the shelf."⁴⁶

Disenfranchising Veterans: The Cases

In the years immediately following the Civil War, veterans accustomed to voting even when far from home generally continued to be able to do so while in soldiers' homes. In many cases, they were enthusiastic participants in politics. And because homes could be fairly large population centers within a district, their residents repeatedly acted as swing votes in elections. As a result, the disfranchisement of veterans carried potential political gains for their opponents, who were often Democrats

⁴⁶ Kelly, *Creating a National Home*, 187, 70. Marten, *Sing Not War*, 166. Padilla, *Army of Cripples*, 83-89. "Plea of the Old Soldier: Veterans Responsible for Ill-treatment Received from Dominant Party," *Washington Post*, (Sept. 29, 1902), 4.

disdainful of the romanticization of the Civil War, Union veterans, and the postbellum order it had produced. In seeking to limit the voting power of home residents, Democrats had a variety of strategies at their disposal: legislative disfranchisement, gerrymandering, disfranchisement of the mentally incompetent, judicial declarations that home residents were jurisdictionally barred from voting in state elections, and claims that home life required dependence incompatible with the local residency necessary for voting. Disenfranchisers tried all of these methods, but found the latter two – and especially the last of these – to be the most effective. As they pursued this tactic before courts and elected officials, they attacked and eventually dismantled the distinction between soldiers' homes and other charitable institutions for which veterans' advocates and home residents had struggled so mightily. That disability status would trump veteran status once both were put in conflict, and that voting hinged on that reversal, reveals the extent to which dependence remained inseparable from disability and the franchise at the end of the 19th century.

Civil War soldiers not only fought for the political fate of the Union, they also cast votes while in uniform. Walter Dean Burnham notes that “[i]n the ten states for which data exist in the 1864 elections, about 8 percent of the total vote was cast by Union soldiers.” Nineteen states had enacted laws enabling soldiers in the field to vote. Ten states or territories enfranchised declarant aliens who served or were serving in the military. In Ohio, for example, the legislature passed a law in 1863 allowing soldiers the right to vote in the field. Their law book recalled that “Thousands of Ohio soldiers

voted at the fall election in 1863 and 1864. The ballot box was either a cracker box or a cigar box and many of the elections were held when the troops were on the march and the command would halt a sufficient time for the soldiers to vote and they would then take up the line of march with a cheer for Brough and Lincoln and perhaps in an hour or two would be exchanging shots on the skirmish line with the confederates." In 1864, the Army Medical Department moved hospital patients to civil hospitals near their homes, especially during the summer and fall, so that patients could vote during the presidential election.⁴⁷

Alexander Keyssar concludes that soldiers voting during the Civil War "established a precedent for loosening the links between residence and participation in elections." During the war, two million Union men were away from their homes on Election Day, a pattern that led to lost Republican votes in the 1861 and 1862 elections. As a result, most states created absentee voting laws for active-duty soldiers. In Wisconsin, for instance, the Military Suffrage Act allowed absent soldiers to cast absentee ballots. In upholding the Act, the Wisconsin Supreme Court said "history has furnished no better example illustrating the capacity of the people for self government, than that furnished under this law, of the citizen soldiers pausing amid the horrors of war to discharge their duties as the primary legislators of the republic, and to guard by

⁴⁷ Walter Dean Burnham, *Comment on Bense: But the Bumblebee Flies Anyway, Doesn't It?* 17 *Studies in American Political Development*, 17 (Spring 2003), 33. Keyssar, *The Right to Vote*, 104. Department of Soldiers Claims, *Laws of Ohio Relating to Bounties, Memorials, Monuments, Relief Fund and Soldiers' Home* 37, OHS (1903), 37. Mary Gillet, *The Army Medical Department, 1818-1865* (1987), 230.

an intelligent use of their ballots, to be forwarded to their homes, the welfare of their country, and those principles of civil liberty for which they are ready at any moment to lay down their lives upon the field of battle.”⁴⁸

Soldiers’ Home residents were avid and active consumers of politics. Home inmates enjoyed debating political topics in debating clubs. The *Los Angeles Times* noted that “visits by candidates for nomination before the various conventions are of almost daily occurrence” at the Pacific Branch. General Patrick, the Dayton Branch Home Governor, complained in 1882: “the peace of the home is seriously marred by the behavior of the politicians. The votes of the inmates of the Home carry the balance of power in the Dayton Congressional district. There is, in consequence, a constant squabble by each party to control them.” Patrick added: “The manner in which votes are bought and sold at the Home...is a national disgrace.” Though generally soldiers’ home inmates were assumed to be Republican stalwarts, some Democratic politicians tried to woo them. Dayton District Representative John McMahon, a Democrat, lobbied for a new music hall in the Soldiers’ Home and pushed for a Home member to receive a political appointment in Washington. The *New York Times* suggested that McMahon’s

⁴⁸ Keyssar, *The Right to Vote*, 104. Frank O. Bowman & Stephen L. Sepinuck, “High Crimes and Misdemeanors: Defining the Constitutional Limits of Presidential Impeachment,” 72 *Southern California Law Rev.* 1517, 1530 n.53 (1999); Samuel T. McSeveney, “Winning the Vote: Connecticut Soldiers in the Field, 1862-1864: A Research and Historiographical Comment,” *Connecticut History* 113 (November 1985). State *ex rel.* Chandler v. Nain, 16 Wis. 398, 423 (1863).

interest in the Dayton Soldiers' Home inmates would evaporate when the inmates were moved out of his voting precinct.⁴⁹

While soldiers' home residents were accustomed to the vote and the power it could bring, neighbors of the homes were not always enthusiastic. They were especially wary of including the veterans in local politics. A significant point of animosity toward the homes was the electoral strength of Home inmates. The concern was not entirely unfounded: In 1895, the Santa Monica school board election was overwhelmingly decided by Pacific Branch Soldiers' Home inmates. 300 out of 465 total votes came from the Home. Additionally, some of the candidates "furnished free transportation for [the veterans] from the Home to the polls in Santa Monica. It is further asserted that on certain occasions when it was learned that a large number of men were to be carried to Santa Monica in the interest of any particular candidates, strenuous efforts have been made in a legitimate way, but with success, to persuade them to refrain from going for that purpose." A newspaper article noted that "[f]igures based on the votes cast at the more recent school elections show that the Soldiers' Home vote has exceeded the vote of the rest of the district by more than two to one. Yet no tax can be levied on the Soldiers' Home property, and the home furnishes only a small number of pupils attending the public schools." Though children who lived at the Home were allowed to go to the Santa Monica public schools, the Santa Monica

⁴⁹ Kelly, *Creating a National Home*, 163. "Soldiers' Home: Instructions for Registration of Voters," *L.A. Times*, (July 17, 1898). "Politics in a Soldiers' Home," *N.Y. Times*, (August 10, 1882), 1. "Ohio Political Outlook: Everything Favorable to the Success of the Republicans," *N.Y. Times*, (Sept. 3, 1880), 5.

residents resented that the Soldiers' Home inmates outvoted them. Furthermore, they felt that the inmates' interests were not the same as the interests of the people who footed the bills and supplied nearly all the pupils. By contrast, inmates worried that the school district disfranchisement bill was "an entering wedge" that would lead to their total disfranchisement with respect to all issues from the local to the national. Santa Monica lobbied the California legislature to disfranchise the Home, but failed. They were more successful, however, when they redrew the boundaries of the school district to exclude the Home entirely. Stephen H. Taft, who lost an election to the Sawtelle Board of Education because the Home inmates voted for his opponent A.J. Stoner, led the gerrymandering.

In Wisconsin, Northwestern Branch inmates voted in Wauwatosa, the locality next to the home. Historian James Marten writes that "[a]lthough area residents were divided more or less evenly between Democrats and Republicans, the large contingent of veterans made the town a Republican stronghold in the 1880s and 1890s. A similar situation developed in the Democratic-leaning St. Paul, where veterans from the Minnesota Soldiers' Home tended to vote Republican in local elections. Some opponents, complained the *Relief Guard*, had tried to eliminate the soldiers' vote, partly by 'stigmatiz[ing] them as paupers, idiots, drunkards and everything else that is mean

and contemptible.' Such attempts led the veterans to close ranks to create 'a unity of sentiment and feeling.'"⁵⁰

The concern about voting by institutional residents partially stemmed from corruption. An inmate of the Pacific Branch Soldiers' Home was outraged at the accusation that party bosses controlled the inmates. In a letter to the editor to the *Los Angeles Times*, the pseudonymous "Dough" charged that "We need no Hervey Lindleys nor Big Webbers nor Dutch leaders to teach us politics or tell us how to vote." The men of the Soldiers' Home are "not for sale." The inmates were "over average of intelligence who [spent the] younger years of our lives in battling for the true principles of Republicanism, as enunciated by our recognized leaders, and not by those who would be our bosses." He asked that "candidates who are honest in their intentions come and see us and they will find a community of intelligent men who know what a vote is worth to them when given to those who have their welfare at heart and are not combined with chronic office seekers or those who are out for the sack or the spoils of office."⁵¹ As institutional administrative personnel obtained their jobs through political patronage, though, they were incentivized to force residents to vote for their party of interest. Though states could declare themselves places where white men were not required to have money to vote, the structure of charitable support, supplied in

⁵⁰ "Soldiers' Home: Members Protest Against Being Cut from School District," *L.A. Times*, (Jan. 24, 1897), 31. "Santa Monica: The Soldiers' Home," *L.A. Times*, (Jan. 18, 1897), 9. Wilkinson, *The Soldiers' City*, 199-200, 222-23; "Cunning. Disfranchise Veterans by Political Jobbery," *L.A. Times*, (Feb. 24, 1915), II-1. Marten, *Sing Not War*, 168.

⁵¹ "Soldiers' Home: A Vigorous Protest Against the Rule of the Bosses," *L.A. Times*, (Aug. 12, 1894), 9.

institutions, rendered it practically difficult for residents of charitable institutions to vote. The incentive for institution officials to deliver their inmates to the polls was to keep their own party in power and thus retain their patronage jobs. If institution inmates had to disperse to their previous residences – or if they did not have one – that made it much more unlikely that institution officials would facilitate their voting.

Importantly, disabled veterans faced a series of legal obstacles if they wished to vote. The majority of states disfranchised those with mental conditions such as lunacy and idiocy, so irrespective of place, lunatics and idiots were unable to vote. Legal consensus also questioned the residency status of those who lived in charitable institutions, and thus the location of their voting. A series of cases involving residency disputes between localities that wanted to assign financial responsibilities for dependents' welfare generally found that "persons under legal disability or restraint, persons of non-sane memory, or persons in want of freedom, are incapable of losing or gaining a residence by acts performed by them under the control of others." Changing a residence required a volitional act "by persons, free from restraint, and capable of acting for themselves." This general rule covered minors, lunatics, *femes covert*, as well as paupers in poorhouses. Legal treatises concurred.⁵²

⁵² "In the United States the statutes generally exclude from the class of voters persons 'under guardianship' or provide that persons duly found *non compos mentis* shall be considered as civilly dead; in which case, of course, they cannot exercise the right of suffrage..." Henry Foster Buswell, *The Law of Insanity: In Its Application to the Civil Rights and Capacities and Criminal Responsibility of the Citizen* (1885), 352; Moses Daniel Naar, *The Law of Suffrage and Elections: Being a Compendium of Cases and Decisions* (1880), 11-72. *Town of Freeport v Board of Supervisors of Stephenson County*, 41 Ill. 495, 500, 501 (Ill. Sup. Ct. 1866). *See also* *Payne v. Town of Dunham*, 29 Ill. 125; *Upton v. Northbridge*, 15 Mass. 547; *Reading v.*

The case of *Sturgeon v. Korte* recognized a small exception but it illustrates the general rule. In that case, decided in 1878, the Supreme Court of Ohio allowed 46 infirmity votes – 42 of which went for the defendant – to stand. Ohio paupers requiring full economic support were required to become infirmity inmates. The Court based its opinion on its reading of Story's *Commentary on the Conflict of Laws* Treatise. According to the treatise, there were three different types of domiciles: "domicile of birth, domicile of choice, and that which results from the operation of law." In order to obtain a new domicile, "two things must concur -- the fact of removal and an intention to remain." Finally, "If he lives in a place, with the intention of remaining for an indefinite period of time, as a place of fixed present domicile, and not as a place of temporary establishment, or for mere transient objects, it is to all intents, and for all purposes, his residence." If the person was considered legally disabled, though, like a minor, a married woman, or an insane person, or a prisoner, he or she could not choose a new residence. Because the inmates were in the infirmary of their free will, the court held, they could establish residence where the infirmary was located and thus vote.

Westport, 19 Conn. 561; *Amherst v. Hollis*, 9 N. H. 107; *Winchenden v. Hatfield*, 4 Mass. 123; *Andover v. Canton*, 13 Id. 547. *Covode v. Foster*: "We think this the legal as well as the ordinary meaning of the term residence, and that accordingly the soldier who occupies a place at the command of his military superiors, the criminal who does the same thing while in custody in the hands of the criminal authorities, and the pauper who is placed and supported in the county poor-house at public expense, gains no residence in the town of his enforced stay." *American Law of Elections*, section 42: "In the absence of statute regulations the general rule seems to be that a pauper abiding in a public almshouse locally situated in a different district from that where he dwells when he becomes a pauper, and by which he is supported, does not acquire a residence in the almshouse for the purpose of voting." See also Naar, *The Law of Suffrage and Elections*, 110; Michael William Jacobs, *A Treatise on the Law of Domicil, National, Quasi-National, and Municipal: Based Mainly Upon the Decisions of British and American Courts* (1887), 369; Frederick Charles Brightly, *A Collection of Leading Cases on the Law of Elections in the United States: With Notes and References to the Latest Authorities* (1871), 113-14.

Moreover, the presumption was that the infirmary was their new residence, as the inmates “may be, and often are, so needy and helpless as to make it reasonably certain that the remainder of their days will be spent in the infirmary; and when this is the case, the infirmary is to such persons, in the full sense of the term, their habitation or home.” On the other hand, though, the Court recognized that its opinion was an exception to the general national consensus that in most states, “no inmate of an almshouse or asylum shall acquire a residence there, while receiving support at the expense of the public.” Indeed, most localities explicitly disfranchised inmates of charitable institutions, although an open question was whether soldiers’ homes were covered under this general disfranchising mandate for dependent inmates.⁵³

Initially, when disabled veterans challenged their disfranchisement in court, the issue was one of jurisdiction: whether the inmates of the National Asylum were subject to the jurisdiction of the state where the asylum was housed and therefore could be considered that state’s citizens. That question was first answered in the negative until Congress ceded jurisdiction of the home to the state. Over a series of subsequent cases, however, the right to vote for disabled veterans residing in soldiers’ homes was denied in state courts because they were classified as charitable institutions. While active duty military voters were accommodated while voting, this flexibility came to an end when soldiers became veterans and residents of soldiers’ homes. The failure to distinguish

⁵³ 74 Ohio L. 32, § 24; 74 Ohio L. 32, §§ 14, 15, and 24. Story, *Commentary on the Conflict of Laws*, § 46. *Sturgeon v. Korte*, 34 Ohio St. 525, 537, 536 (Ohio Sup. Ct. 1878).

between active duty and veteran status thus weakens Keyssar's claim that war drove lasting changes in absentee balloting and voting technology.

In 1884, Ohio was politically divided between the Republicans and Democrats. The city of Dayton only had a small Republican majority among the electorate. Both parties viewed the election with intensity: "In many voting places there was a large assembly of voters before the polls opened, for the purpose of seeing that the opposite party took no undue advantage in the election of judges and clerks." Without the Dayton Branch Soldiers' Home votes, the Ohio Legislature would be split between 73 Democrats and 72 Republicans. Soldiers' Home voting turnout depended on a number of factors. Dayton Branch Soldiers' Home inmates had a tough time traveling to their voting precinct. The *New York Times* suggested that Democrats in the Ohio Legislature deliberately placed the ballot box in an inconvenient location.⁵⁴

Republican Civil War veteran and amputee John Sinks and Democrat David Reese were the candidates for the Dayton Congressional office in the 1884 election. According to the official results, Sinks received 6,306 votes while Reese had 6,283. Both sides claimed victory as the candidates conferred with their respective political parties before deciding to file suit. Reese appealed the election result, claiming that the votes of the thirty asylum inmates for Sinks and the eight votes for himself should be thrown

⁵⁴ "Below the Mark: Ohio Fails to Reach her Full Republican Majority," *The Atlanta Constitution*, (Oct. 15, 1884), 1. "It's All Right: Ohio Legislature Will be Republican," *L.A. Times*, (Nov. 6, 1897), 1. "Ohio Political Outlook: Everything Favorable to the Success of the Republicans," *New York Times*, (Sept. 3, 1880), 5.

out. Reese contended that the inmates were not permitted to vote in Ohio because the asylum was under the exclusive jurisdiction of Congress and therefore, the inmates were not Ohio citizens. Sinks responded that the inmates qualified as Ohio voters because the asylum was an eleemosynary, or charitable, institution within the boundaries of the state. Rather than an extension of the army, “a work of a purely military or naval character” that functioned under Congress’s war power, the asylum was “a work of generosity simply, resting on moral obligations alone, and not on any constitutional obligation imposed upon or required of the general government.” Furthermore, the inmates volunteered to enter the asylum; they were “at the asylum by choice, with the right to leave whenever they choose,” thus the asylum was not akin to a military station and the inmates were no longer subject to military service.⁵⁵

Ultimately, the Ohio Supreme Court found in favor of Reese. Chief Justice Brinkerhoff, writing for a unanimous court, argued that the asylum was an extension of Congress’s war power, and thus, the asylum was subject to exclusive U.S. jurisdiction: “The power to declare war, and to raise and support armies, is vested in the Congress of the United States. These provisions anticipate the existence of a state of war. Disease and wounds, maiming and disabilities, are the natural and necessary consequences of war; and to leave men maimed and disabled while in the service of the government, unprovided for, would shock not only the sensibilities, but the sense of justice, of all civilized men. Asylums for the disabled soldier in no substantial sense differ from

⁵⁵ “No Change!: Republicans Still Claim the Ohio Legislature,” *Detroit Free Press*, Nov. 6, 1897, 1. Sinks v. Reese, 19 Ohio St. 306, 308 (Ohio Sup. Ct. 1869).

hospitals in a fortress or in the field. All are alike necessary, and the power to erect and maintain them is incidental to the war power of the government.”⁵⁶ Disability was an inevitable and predictable consequence of war, the Court reasoned, caring for disabled soldiers was an expected part of a civilized culture, and thus asylums for disabled veterans naturally flowed from Congressional power over war.

Consequently, when inmates joined the asylum, they forfeited their Ohio residency, and thus their ability to vote in Ohio elections. The Court concluded that since an inmate “is relieved from any obligation to contribute to [Ohio] revenues, and is subject to none of the burdens which she imposes upon her citizens,” in turn inmates would lose the ability to weigh in on Ohio governance. In the words of the Court: “He becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as is the State of Indiana or Kentucky, or the District of Columbia.”⁵⁷

The Court emphasized the isolation and lack of ties that the asylum inmates experienced; the opinion unanimously noted “there is something in itself unreasonable that men should be permitted to participate in the government of a community, and in the imposition of charges upon it, in whose interests they have no stake, and from

⁵⁶ Sinks, 315.

⁵⁷ Aside from the wholesale disfranchisement of the asylum inmates, the Court discussed two contested votes in particular. With respect to Wortz, the Court contended that his “testimony clearly shows” that he was an idiot and thus his vote should be invalidated. By contrast, “the vote of an old gentleman of the name of Davidson” should not have been thrown out by the lower court. Davidson was not shown “to be either a lunatic or an idiot, but simply a man whose mind is greatly enfeebled by age.” The Court did not discuss, though, why enfeeblement by age was functionally different than mental incapacity based on lunacy or idiocy. Nevertheless, “the reverence which is due to ‘the hoary head’ ought to have left his vote uncontested.” *Ibid.*, 315-16.

whose burdens and obligations they are exempt.”⁵⁸ As discussed above, this emphasis on total isolation, however, belied the exceptionally public relationship and interaction between soldiers’ homes and their surrounding communities. Communities linked themselves to soldiers’ homes through economic benefits such as jobs and tourism even as the homes brought vice and disorder.

The *Sinks* case caused outrage among veteran advocates. The *Home Bulletin*, the newsletter of the Southern Branch of the NADVS, published an article titled “Veterans’ Rights” that argued for the voting rights of Southern Branch residents and quoted extensively from the U.S. Constitution. The *Richmond Dispatch* countered with the argument that since the land on which the home stood had been ceded to the federal government, it actually was not part of the Commonwealth of Virginia and no one residing on it should have the franchise in state elections: “It is a preposterous absurdity.” The *Bulletin* responded that it was an outrage that the soldiers ‘should have fought the civil war to an end, and with the result of *enfranchising* the Negro and *disfranchising* themselves.”⁵⁹

After *Sinks v. Reese* held that inmates of the NADVS could not vote in state elections, in 1871, Congress passed a law ceding jurisdiction of the Central Branch asylum to the state of Ohio.⁶⁰ *Renner v. Bennett*, a case decided the same year as the

⁵⁸ *Ibid.* at 317.

⁵⁹ Marten, *Sing Not War*, 168.

⁶⁰ *Renner v. Bennett*, 21 Ohio St. 431 (Ohio Sup. Ct. 1871).

Congressional act, reinstated the Central Branch inmates as Ohio voters. 105 inmates then attempted to vote for Republican Candidate Jeremy Renner in the October election for county coroner and the election judges rejected all of their ballots. The Ohio Supreme Court held that the Congressional act was a “legitimate exercise of congressional power, and that its effect was to restore to the State its jurisdiction over the asylum.” Accordingly, the 105 inmates were residents, citizens, and voters of Ohio.⁶¹

While *Renner* restored voting rights to the asylum inmates, the judicial system had yet to rule directly on the issue of state power over the asylum and the linkage between veteran asylums and other charitable institutions. The *Sinks* Court identified the asylum as falling under the U.S. war power. Congress then severed the knot between themselves and the asylum. No one had yet to place the asylum itself within the boundaries of state welfare power.

When James Silvey, an inmate of the New York State Soldiers and Sailors’ Home, tried to vote in the 1886 election, the justices of the peace who administered the election rejected his vote because of his residence in the Home. The New York legislature had debated extensively whether to disfranchise charitable institution inmates, including soldiers’ home inmates. The *New York Times* reported that the two institutions the legislature had in mind were the Sailors’ Snug Harbor on Staten Island, and the Soldiers’ Home at Bath. Democratic Representative Wright Holcomb offered an amendment to exempt the two veterans’ homes, but it was rejected. Another

⁶¹ Ibid. at 449.

Democratic Representative, William P. Burr, proposed another amendment to specify that the inmates could not vote on local elections, but were allowed to participate in state and federal elections. This amendment was also rejected. The *New York Times* noted that “A great deal was said in praise of the old soldier and the old sailor, both Holcomb and Burr soaring high in the realms of oratory.” As the state was evenly divided politically, the *Times* article cynically suggested that the Democrats were purporting to act in favor of the veterans in exchange for extra votes.⁶² The New York Constitution, Article 2, section 3 read: “For the purpose of voting no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning, nor while kept at any alms-house, or other asylum at public expense; nor while confined in any public prison.” The election inspectors who prevented Silvey from voting argued that he was not a resident of Bath because he was a “mere inmate” of the Soldiers’ Home and there for a temporary purpose. According to them, the Home was an asylum maintained at public expense and thus fell within the provisions of Article 2, section 3. Silvey countered that he had been living in the Home for six years and intended to make it his official and permanent residence.⁶³

⁶² “An Article in Regard to Voting by Inmates of Charitable Institutions Adopted,” *N.Y. Times*, Aug. 21, 1894, 2.

⁶³ *Silvey v. Lindsey*, 62 Sickels 55, 59 (Ny. Ct. of App. 1887).Id. at 55.

The New York Court of Appeals sided with the election officials and against Silvey. His residence was not sufficient to make him a resident of Bath and the Home was a charitable institution under the provisions of Article 2, section 3. The Court, in a holding akin to Sinks's argument in *Sinks v. Reese*, emphasized the dependent nature of Silvey's relationship with the Home and the town. His presence in the Home was not voluntary, according to the Court: "His presence there was eleemosynary in its character; he was there as a dependent, because he had no means of support or relatives to maintain him, and liable to be discharged whenever the board of trustees were satisfied that he was of sufficient ability or means to support himself." Thus, "[a]s to Bath, his residence was a beneficiary's residence, and no other. His relations were not with the village, but with the institution, which was situated within its borders." Silvey's choice to come to Bath was not one of "a citizen changing his residence, but as an object of well bestowed and deserving charity." The prohibition against voting by asylum residents was justified, the Court reasoned, to prevent undue political influence: "It is an asylum supported at the public expense, and its members are within the mischief against which that provision is aimed, the participation of an unconcerned body of men in the control through the ballot-box of municipal affairs in whose further conduct they have no interest, and from the mismanagement of which by the officers their ballots might elect, they sustain no injury."⁶⁴

⁶⁴ *Silvey v. Lindsey*, 62 Sickels 55, 59 (Ny. Ct. of App. 1887).*Id.* at 55.*Id.* at 60. *Id.* at 601.

The Court reasoned that Silvey was not entirely disfranchised, as he could vote at his previous residence. His status should be considered as “temporarily absent.” As he could not actually afford to travel back to his previous residence and he would need the permission of the Home administrators to leave the institution, the *Silvey* decision rendered him and other destitute asylum residents like him functionally disfranchised.

Silvey is the first in a line of state cases that disfranchised soldiers’ home inmates because of their residential status. In this set of cases, courts denied claims that soldiers’ homes should be treated as an exception to the rules governing charitable institutions that denied the vote to those who resided within them.

The Michigan Supreme Court in Uriah Carpenter’s case, *Wolcott v. Holcomb*, decided in 1893, rejected Carpenter’s claim that he should be a voting resident of the Soldiers’ Home. According to the court, “[t]he Soldiers’ Home is purely eleemosynary in character.” An institution created and maintained for the support of “indigent persons who became blind and deaf in the service of their country or state” is as much of a charity as an institution “established for the support of those who are born blind or deaf, or who have become so from other causes.” Furthermore, it was immaterial that the Home was not labeled as an “asylum.” Citing the dictionary definition of “asylum” as “an institution for the protection of the relief of the unfortunate,” Carpenter “entered

the home...solely as a beneficiary...to accept a well-bestowed and deserving charity," and thus did not gain a residence while an inmate.⁶⁵

The *Wolcott* Court emphasized what they saw as the lack of connections of the inmates to their local community. "The inmates of the home own no property, pay no local taxes, do no work in or for the benefit of the municipality, and have no pecuniary interest in its local affairs," the court charged. "In fact, they have no connection with, and stand in no relation to, local municipal government." The court noted that Michigan copied the constitutional provision governing voting in charitable institutions from New York and indeed, the case of *Silvey v. Lindsay* involved a nearly identical set of circumstances. The *Wolcott* majority reiterated its disdain for the home's inmates by re-quoting the *Silvey* court's view that the New York inmates lacked a legitimate interest in local affairs and, left unchecked, could unduly influence the locality through the ballot box. Furthermore, the court voiced fears for Michigan if inmates were enfranchised. For example, the 1,851 male inmates of the Wayne County almshouse were "more than twice the whole number of voters in the township" and thus could control the politics of Haukin township, where the almshouse was located. Like the *Silvey* Court, the *Wolcott* Court tempered its derision and disfranchisement of the inmates by stating that "[n]o question of disfranchisement is involved," although, of course, the inmates were hardly free to travel to their previous residences to vote.⁶⁶

⁶⁵ *Wolcott v. Holcomb*, 97 Mich. 361, 363-64 (Mich. Sup. Ct. 1893).

⁶⁶ *Id.* at 364-65.

The *Detroit Free Press* reported the disfranchisement of the veterans with approval: "The Republican attempt to make party capital out of the refusal of the election inspectors to receive the votes of inmates of the Soldiers' Home at Grand Rapids has come to grief. The prosecution has been thrown out of court by a Republican judge; and the action of the inspectors is declared to be lawful and right."⁶⁷

Republican Chief Justice Hooker rendered a strongly worded dissent to the *Wolcott* majority. "It should not be assumed that those who inhabit almshouses or asylums are unworthy people, or that they have no interest in elections, or that they are disqualified from discharging the duties of the citizen understandingly and properly." He brought forth and rejected what was the underlying subtext of the majority opinion – that the inmates were poor and undesirable voters: "The only reason given for the construction contended for is that these classes are undesirable voters at the place of the asylum; that they pay no taxes, do not work for the benefit of the municipality, and have no interest in local affairs. The same may be said of many persons in all localities, and was probably as true of these before their admission as after." Justice Hooker noted

⁶⁷ "The Soldiers' Home Voting Case," *Detroit Free Press*, (May 8, 1893), 4. The Soldiers' Home tried to utilize the ruling to expel John Hovey, who had "become insane, and is rapidly growing worse." The Home argued that since *Wolcott* decision found that Home inmates did not change their resident, the Board of Managers passed a resolution stating that "Whereas, John A. Hovey, an inmate of this home, has become so much demented that he is now Insane, and tending to viciousness, and in a condition that he is liable to do himself or some of the inmates great bodily harm," they would honorably discharge him and attempt to send him to an asylum. The House Commandant wrote to the Michigan Attorney General to ask whether the state would compensate the Home for dispatching him to an asylum or back to his guardian. The Attorney General summarily dismissed the Home's claims, stating that "It is the policy of the law that no honorably discharged soldier who resides in this state shall become a public pauper, or be supported by the county or other local municipality." Thus Hovey stayed at the Home as an inmate. "Insane Veterans," *Detroit Free Press*, (Dec. 17, 1893), 3.

that the inmates were being indicted on charges that were not requirements for voting: “[i]t has never been a requisite to electoral rights that the citizen should pay taxes, do work for the benefit of the municipality, or evince interest in municipal affairs. Nor does the right depend upon a wise, or even honest, exercise of the privilege of the ballot. Doubtless, there are many whose votes could be dispensed with, to the profit of all local municipalities, and the state as well, but the electoral franchise is based upon broader principles. There is no man so poor or low that he is not richer and manlier for his political election of the rights of all classes.”⁶⁸

Despite Justice Hooker’s ringing dissent, other cases fell in line with the *Silvey* and *Wolcott* reasoning. Though the court cases emphasized the importance of local ties and connections to the community when denying the residential claims of the Home veterans, these arguments are rendered illogical when one considers that the Home veterans had even fewer ties to their previous places of residence, since they lived in the Home and intended to do so for the rest of their lives. The only differentiating factor between voting in the Home district and in the district of their previous residences is that the latter would diffuse their political power.

In California, a Veterans’ Home also fell prey to a lawsuit in 1895. J.W. King in the *National Tribune* warned that “if these votes shall be declared illegal, the plurality on the Presidential electors now apparently for McKinley will be wiped out and a small majority left for the Bryan electors. How does that strike the old vets who voted for

⁶⁸ 97 Mich. 361 at 370-71.

Bryan?" At a Republican rally at the Home, Republican candidates and operatives recounted the story of the lawsuit. The lawsuit was the result of deliberate action on the part of Democrats. A year and a half before the election, Democrats met to organize a lawsuit to disfranchise the residents. Ultimately, Abbot Kinney brought the suit. In response, a set of Republican lawyers offered their services pro bono and the Republican State Central Committee "adopted resolutions...promising its aid to the veterans, even if the case had to be appealed to the Supreme Court." Republican Frank Flint thundered that "There was a Democratic meeting here at the Home. The speakers told you what they would do for you. They said they would sit up nights to get your pensions. At that very time a Democratic lawyer was appealing to the Supreme Court to disfranchise you." He reminded the veterans of the legal disputes in Ohio with *Sinks v. Reese* and *Renner v. Bennett*: "It was a Republican Congress that passed the act designed to restore the suffrage to the veterans in Ohio. There was a Democratic Legislature in Ohio and it refused to accept the will of Congress and to restore the suffrage to the veterans." The *Los Angeles Times* reported that "the suit brought by Abbot Kinney against the County Clerk and certain inmates of the Soldiers' Home to deprive the veterans of the right to vote has been discussed temperately and intemperately, and aroused a great deal of feeling." The article added: "The question raised by Abbot Kinney is one of importance not only to the old soldiers, but to the people at large. The right of suffrage on which the perpetuity of our free institutions depends, should, of course, be zealously guarded." Johnstone Jones, a lawyer interviewed in the article, said

that “it cannot be supposed that [the veterans] wish to violate law, nor, as suggested, to impose burdens upon the community, nor to establish wrong precedents, open the door to abuses, jeopardize our free Institutions, endanger the fabric of our government, nor do any of the direful things that the exercise of their voting privileges, it is claimed, will bring about.” “They ask no special favors from the courts,” according to Johnstone. Instead, “[i]f, when disabled by age, disease, or otherwise and unable to earn a living, they seek refuge in a home which a grateful country has prepared for them, they are to be stripped of the dearest rights of American citizenship, they want to know it.” The position of the article was similar to the dissent in *Wolcott*. Disfranchising the inmates would rely on ideas about dependency and financial status forbidden by the California Constitution and general principles about the electoral franchise. Moreover, as the article did not consider the Home an almshouse or asylum, the previous court decisions should not apply.⁶⁹

Ultimately, *Stewart v. Kyser* in 1895 was the only case in this line of jurisprudence to find in favor of enfranchising the inmates at their soldiers’ home. The opinion recounted the testimony of one of the witnesses, a veteran named Killalee -- “a sample of that of some sixteen other inmates of the Veterans’ Home who were called and testified.” Before Killalee came to the home “he was living on the charity of relatives and friends,” – as, the court pointed out, an elector. He applied to the Home “because I

⁶⁹ “Disfranchising Old Soldiers,” *The National Tribune*, (Dec. 17, 1896). “Old Soldiers’ Votes: Attempts to Disfranchise Veterans to be Rebuked,” *L.A. Times*, (Nov. 8, 1898), 12. “Veterans’ Rights: Abbot Kinney’s Suit Against Old Soldiers,” *L.A. Times*, (Sept. 30, 1898), 8. Property qualification for voting “is expressly forbidden by article 1, section 24, of the Constitution of the State of California.”

was in indigent circumstances....At the time I went there it was my intention to make the home my permanent home. I made it as a home to live and die – as a refuge.” The opinion held that residence in the Home did not preclude gaining a residence for the purposes of voting... “upon proof of their intention to acquire a domicile in the county of which they are the inhabitants.”⁷⁰

Soldiers’ homes outside of California remained an exception to the rule allowing military personnel, students, and others who travelled from their original residence to vote and in line with the principle of disfranchising inmates of other charitable institutions. The Supreme Court of Michigan reinforced its *Wolcott* ruling the next year in *People ex rel. Saunders v. Hanna*, when 82 soldiers’ home inmates attempted to vote. William Saunders and Kennedy Hannah were vying for the office of the justice of the peace in Kent County. Saunders had asked the election inspector to challenge the inmates at the polling site, but the inspector “failed to do so, fearing a disturbance.” Saunders got his wish through the judicial system, though, as he successfully litigated to exclude the votes from the precinct where the soldiers’ home was located. In yet another Michigan case, the dispute between Charles Belknap and George Richardson developed into a court case that eventually went to the Michigan Supreme Court, as well as a Congressional hearing. Ultimately, the Congressional committee disfranchised the Michigan Soldiers’ Home voters, thus adding a federal imprimatur to the state court decisions. Following the logic of the *Wolcott* case, the committee stated that the intent of

⁷⁰ Stewart v. Kyser, 105 Cal. 459 (1895).

the Soldiers' Home residents was not at issue; as the soldiers' home was a charitable institution, the inmates were not residents. The finding was that 199 illegal votes were cast at the Soldiers' Home: 152 for Republican Charles Belknap and 41 for the Democrat Richardson. A 150-vote majority ultimately elected Richardson. The Supreme Court of Kansas followed suit in 1896, reversing the election results in an election dispute between G.H. Lawrence and J.H. Leidigh by eliminating the votes cast by the inmates of the State Soldiers' Home. Kansas had an identical constitutional provision as Michigan to disfranchise residents of charitable institutions, and the court held, the state should follow *Wolcott's* reasoning. In *State v. Willett*, in 1906, the Supreme Court of Tennessee nullified the voting status of the more than 500 inmates of the Soldiers' Home near Johnson City that were registered voters.⁷¹

In Illinois, the assistant assessor or register of voters in the city of Erie registered 365 inmates of the Soldiers' and Sailors' Home as "old gentlemen," using information from an inmate or former inmate. When an elector challenged the inmate registration list, thirty-eight inmates testified, arguing that that they were permanent residents of the Soldiers' and Sailors' Home and thus should be able to vote in the election district. The Supreme Court of Illinois disagreed, calling the Home "an asylum within the meaning of the law," and thus the inmates could not vote. The Court questioned the

⁷¹ *People v. Hanna*, 98 Mich. 515 (Mich. Sup. Ct. 1894). *Belknap v. Board of Canvassers of Ionia*, 95 Mich. 155 (Mich. Sup. Ct. 1893). *Charles Belknap v. George Richardson*, 3346 H.rp. 1946 (Michigan, Feb. 27, 1895). "Belknap was Beaten: House Committee on Elections So Decide," *Detroit Free Press*, (Feb. 24, 1895), 1. *Lawrence v Leidigh*, 58 Kan. 594 (Kansas Sup. Ct. 1896). *State v. Willett*, 9 Cates 334 (Tenn. Sup. Ct. 1906).

inmates' attachment to the locality, noting "that their sole object in coming into the said district was to receive and enjoy the privileges and comforts of said home, and that they have no relation to the city of Erie or to said election district except as members or inmates of said home," and that "[t]he evidence does not show that they intend to remain in that election district longer than they remain in the home; and most of them stated that they had no immediate relatives or property or other interests at the place of their former homes to induce them to return thereto."⁷²

In Idaho, Soldiers' Home residents who had not resided within Ada County before coming to the home cast 40 votes for Hester Spackman.⁷³ The Supreme Court of Idaho agreed with elector Frank Powell's challenge to the election and disfranchised the forty inmates. It also agreed with the *Silvey* Court that disfranchisement was necessary to prevent the "mischief resulting from the participation of an unconcerned body of men in the control, through the ballot box, of municipal affairs in whose further conduct they have no interest, and from the mismanagement of which by the officers their ballots might elect they sustain no injury." The dissent in *Powell* vehemently disagreed with the majority opinion, charging that "brave old veterans, whose heroism and self-sacrifice assisted in preserving the unity of the nation, will not be disfranchised by court-made constitutional provisions. Republican Justice Sullivan challenged the majority's characterization of the Home as a charitable institution, arguing that the inmates were "not under the dominion of others, as persons who are in prison or in

⁷² In re Registration of Voters in the City of Erie, 21 Pa. C.C. 473 (Ct. Common Pleas Pa. 1898).

⁷³ *Powell v Spackman*, 65 P. 503 (Idaho Sup. Ct. 1901).

almshouses subject to the absolute will of others.” He also disputed the oft-cited claim that the inmates were not practically disfranchised because they could go to their previous residence, arguing that “by reason of wounds received in battle, disease, and old age, many of them are unable to return to the counties from whence they entered said home to vote, and they are as effectually disfranchised as though it were held that they could not vote at all.” Ultimately, Justice Sullivan challenged the underlying assumption of disfranchisement that these were undesirable voters, asking rhetorically, “Are those old veterans an undesirable and ignorant class in whose hand the ballot ought not to be placed?”⁷⁴

Though these cases indicate the importance of local politics in the decision to litigate electoral disputes, because the veterans were primarily Republicans, Democrats were the ones who pushed for the disfranchisement of the soldiers’ home inmates. Thus, though the cases are found across the United States, none of the court cases concerned Confederate Home inmates. According to the *Atlanta Constitution*, the Virginia Attorney General deliberately decided to disfranchise the Confederate Soldiers’ Home residents in Richmond. They were sacrificed for a greater purpose, “in order to prevent the nearly 3,000 inmates of the national soldiers’ home at Hampton from voting at that place; that it was considered of more advantage to the democratic party to lose the 250 votes at Richmond than to have over 2,000 republican votes cast at Hampton.” The *National Tribune*, by now the official paper of the Grand Army of the

⁷⁴ Ibid. at 506, 513.

Republic, recounted that “[t]here is a very angry crowd in Lee Camp Home for Confederate Veterans...there are about 300 voters in the Lee Camp Home, and they are going to appeal to the Supreme Court to see if there is not some way in which they can vote, without giving the privilege to the Union veterans at Hampton.”⁷⁵

Soldiers’ home proponents attempted to differentiate soldiers’ homes from other charitable institutions, but they were unsuccessful when it came to voting. These homes fell prey to the same types of statutes that disfranchised asylums. At issue in the cases were two competing narratives with respect to voting. The predominant view stressed the dependence of the inmates, their poverty, lack of economic stakes in the local community, and susceptibility to corruption as justifications for denying inmates the ability to vote. By contrast, the dissenting opinions of Justice Sullivan in *Powell v. Spackman*, Justice Hooker in *Wolcott v. Holcomb*, and the majority in *Sturgeon v. Korte* emphasized the martial citizenship of the residents. These dissents argued that though they were impoverished, their poverty should not be a reason for disfranchisement because their wounds were earned through their military service. For both sides, social contract theory served as a foundation for justifying voting. For those in favor of disfranchisement, dependence disqualified the inmates from participation in the social contract. For those who wanted the inmates to vote, their military service justified their participation in politics despite their current dependent status.

⁷⁵ “Both Parties Claim Rooster,” *The Atlanta Constitution*, (Sept. 23, 1902), 5. *The National Tribune*, (Oct. 2, 1902).

Only in 1906 did the tide turn. In an election challenge concerning the Federal Soldiers' Home in Missouri, the Supreme Court of Missouri rejected the claim that the home was akin to other charitable institutions in the state.⁷⁶ Justice Lamm, writing for the majority intoned, "The state of Missouri made the contracts through a motive of patriotic duty and along lines of sentimental beauty. Who shall weigh, as it were, with goldsmith's scales the widow's mites that passed into the public chest and in return for which the state of Missouri plighted the public faith and by a public act solemnly agreed to maintain its soldiers, broken by misfortune in health and purse, and (what is more to the point) at the same time permit them to vote?"⁷⁷ He concluded the opinion by noting that "no horse, straddled by any court, would carry us further away from the path of sound law than the horse of reading into the people's Constitution by unnecessary construction the theory that Missouri has disfranchised her veterans of the Civil War, old, poor, and infirm, but who are her honored guests at her own fireside on her own invitation."⁷⁸

By the time that Justice Lamm wrote his colorful opinion, there were fewer Civil War veterans, though in 1910, 31,830 veterans still lived in soldiers' homes.⁷⁹ But veterans' right to vote did not become a moot issue – World War I ushered in the admission of huge numbers of disabled veterans to soldiers' homes. By this time, war

⁷⁶ Hale v. Stimson, 95 S.W. 885 (Mo. 1906).

⁷⁷ Ibid. at 892.

⁷⁸ Ibid. at 894.

⁷⁹ Skocpol, *Protecting Soldiers and Mothers*, 143.

trauma was better recognized –it was first described as shell shock and later as post-traumatic stress disorder. Yet, many of the problems faced by disabled veterans after the Civil War era still lingered. After the Civil War, white men who fought the war and suffered trauma found themselves on the outskirts of political citizenship with others considered too dependent to vote.

The conventional narrative that disabled citizen-soldiers had a privileged position is a largely imagined history. The actual history of disabled American citizens has more in common with our general understanding of the Jim Crow era as one of disenfranchisement. Here we also see the contraction, rather than the expansion of political rights. Now we must add that most states of the union disfranchised those considered too dependent to conduct an independent vote, and thus, disfranchised the very soldiers who had fought for the ideal of citizenship.

**CHAPTER 3 -- SEEING IDIOCY AND INSANITY THROUGH THE LAW'S EYES:
CONGRESSIONAL CONTESTED ELECTION HEARINGS, MENTAL DISABILITY AND THE RIGHT
TO VOTE**

Q. What do you understand this contest to be about?

A. About illegal voting is what I heard.

Q. What are they contesting about illegal voting for?

A. They thought there was some votes put, I suppose, that wasn't right.

Q. What was their object in finding that out?

A. To find out if we are idiots or not; damn fools or something.¹

Q. Are you an expert, in any sense of the word, on questions of insanity?

A. No, sir; I could tell a crazy man when I see him, though.²

If you asked William Dickerson what was the sum of four plus five, as Congress did in 1868, he would reply: six. Five plus four? Seven. Dickerson also expressed his thoughts on Abraham Lincoln: he was the President of Ohio. Why did Congress want

¹ Testimony of Lewis Byers, *James Campbell v. Henry Morey*, H.R. Rep. 1845, pt. 1 (1884), at 307.

² Testimony of John D. Hawkins, *Campbell v. Morey*, at 561.

Dickerson's views on arithmetic and politics? After all, Dickerson was merely a man in small town Ohio. He certainly was not a mathematician or politician. What he was, though, was a voter. And it was Congress's job to determine whether he was also an idiot.¹

In the second half of the 19th century, Congressmen grappled over thirty times with how to determine the mental status – and thus the voting status – of ordinary American voters. Drawn from the House of Representatives, Congress assembled hearings to determine the final electoral outcome when a congressional seat was at stake and in contention. The congressional committee would hear testimony from the political candidates as well as all other relevant parties in the disputed election before voting on an outcome. This chapter examines thirty-five contested congressional election hearings that arose from 1863 to 1890. These hearings show the cross-cutting nature of voting, as the highest legal bodies heard about election practices in the smallest venues in the country. They also show the significance and process involved in creating “common sense” determinations for assessing mental status.

These disputes about mental status arose from the state constitutional clauses banning lunatics and idiots from voting discussed in Chapter 1. These clauses were put into place over the course of the 19th century. While in 1871, Isaac Ray, in his *Treatise on the Medical Jurisprudence of Insanity*, wrote “[it] may be mentioned as a curious fact, however, that while the idiot is denied the enjoyment of most of the civil rights, he is

¹ Testimony of William Dickerson, *Columbus Delano v. George Morgan*, H.R. Ms. Doc. No. 38, pt. 1 (1867), at 108.

quietly left by the constitutions of the several States of the Union in possession of one of those political rights, that of suffrage, the very essence of which is the deliberate and unbiased exercise of a rational will," this statement was increasingly untrue as the century progressed. In 1880, George Washington McCrary noted that while "qualifications of voters are not uniform in all the states, but they are similar. Among those which are generally required" included "[t]hat no idiot or lunatic shall vote." By 1885, treatise writer Henry Foster Buswell declared that "[in] the United States the statutes generally exclude from the classes of voters persons 'under guardianship' ... or provide that persons duly found *non compos mentis* shall be considered as civilly dead; in which case, of course, they cannot exercise the right of suffrage...." Leading treatise writer Thomas Cooley declared it "obvious grounds" without elucidating them on why "the idiot, the lunatic, and felon" were excluded from voting.²

By 1890, 29 states had a mental status qualification for suffrage. Between 1868 and 1890, Alabama, Florida, Arkansas, Georgia, Mississippi, Nebraska, Nevada, South Carolina, Texas, West Virginia, Montana, South Dakota, and Washington joined Maine, Massachusetts, Vermont, Virginia, Delaware, Rhode Island, New Jersey, Louisiana,

² Isaac Ray, *Treatise on the Medical Jurisprudence of Insanity* (Boston, 1871), 119. This was echoed in another treatise, that of John Hutton Balfour Browne in *The Medical Jurisprudence of Insanity*, in 1880: "It is somewhat curious that in the United States of America, while idiots are deprived of almost all their civil rights, they are, by the Constitution of several of the States, left in the enjoyment of the right to vote at elections." 157. George Washington McCrary, *A Treatise on the American Law of Elections* (New York, 1880), 45. Henry Foster Buswell, *The Law of Insanity: In Its Application to the Civil Rights and Capacities and Criminal Responsibility of the Citizen* (1885), 351-52. Thomas McIntyre Cooley, *A Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of American Union* (Michigan, 1868).

Iowa, Wisconsin, California, Minnesota, Oregon, Ohio, Maryland, and Kansas in prohibiting insane persons, idiots, persons under guardianship, or *persons non compos mentis* from voting. In 1892, treatise writer Albert Bushnell Hart observed that these disqualifications had considerable effects on the size of the electorate. Based on the 1880 census, he wrote: "The number of adult men in asylums...was probably not far from 40,000, besides many thousands of defective and weak-minded persons."³

Though these bans were written into the law, guidelines for determining who was a lunatic or idiot remained vague or nonexistent. It was up to local election officials, ordinary citizens, and ultimately members of the federal legislature, in some instances, to make these decisions.

What can disability studies bring to analysis of these congressional hearings? Disability studies, unlike the earlier medically-focused model of disability, emphasizes the social context that gives an impairment its meaning. Disability scholars emphasize the importance of visibility and representation to the classification and discomfort about the "ugly," "crippled," or "maimed" body. These scholars tend to focus their work upon physical disability; in the words of Rachel Adams, "the iconic figure of which is the wheelchair user."⁴ Here, what does it mean to "see" mental disability? Furthermore, what does it mean for the *law* to "see" lunacy or idiocy?

³ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York, Basic Books, 2009), 329-331. Albert Bushnell Hart, *The Exercise of the Suffrage* (1892), 311.

⁴ Rachel Adams, "Disability Studies Now," *American Literary History* (2014), 500.

Unlike other doctrines of law, such as criminal law, here, with voting, the law needs recruits in order to function in the guise of election officials drawn from the local community and eyewitnesses to the election charged with giving their opinion. These ordinary people must not only know the requisite legal rules – lunatics and idiots are not allowed to vote – but also how such laws should be enforced, and against whom, in order to administer an election. In the hearings, witnesses must offer conclusions with significant consequences based on what people *seem* to be like. This has to do with more than practice, because in most cases, the disputed lunatic or idiotic voters voted at least as calmly and peacefully as anyone else; however, they still had to be flushed out and excluded because of their status. Therefore, it is not just what their bodies did at the election, but what their minds meant to the society at large. To be a person accused of mental inadequacy meant to be subject to collective assessment and surveillance, which provided the evidence needed to gain an acquittal or conviction as a lunatic or an idiot.

Thus, lunatic and idiotic voters had to be grotesque enough to be noticed. In this way, the spectacle of voting and subsequent hearings may be considered a “practice of enfreakment,” following Rosemarie Garland Thomson. She contends that “a freak show’s cultural work is to make the physical particularity of the freak into a hypervisible text against which the viewer’s indistinguishable body fades into a seemingly neutral, tractable, and invulnerable instrument of the autonomous will,

suitable to the uniform abstract citizenry democracy institutes.”⁵ Freak shows have been fertile terrain for disability scholars, yet this topic, like disability studies as a whole, focuses upon physical disabilities. Here, I want to shift the focus not only to mental disabilities, which are often considered “invisible” disabilities, but also to an arena considered more benign than that of the freak show, the law.

This approach goes further than merely examining the results of these hearings and the up-or-down vote by Congress on whether someone was a lunatic or idiot. If we just focus on outcomes, then much nuance is lost regarding the process of determining disability. What these hearings reveal is that defining disability is a community project, involving heavily contextual mundane encounters subject to revised opinions. With respect to freak shows, recognizable freaks are juxtaposed against “normal” bodies who derive their normalcy by their distance from the bodies on display. Here, on the one hand, the process of voting and the subsequent hearings that contested these votes was a process of enfreakment, which created a spectacle of people whose mental infirmities were supposedly grotesque enough to be noticeable. “Lunatic” or “idiot” voters were necessarily differentiated from “normal” voters who retained the franchise. On the other hand, there was rarely much distance between those voters who were disenfranchised and their neighbors, colleagues, and family members. Their lack of distance created ambivalence and hesitation when it came to “freaking” the voters in question. Thus, ultimately, the “common sense” of the ordinary people examined in this

⁵ Rosemarie Garland Thomson, *Freakery: Cultural Spectacles of the Extraordinary Body*. New York: New York University Press, 1996, 10.

chapter reveals that though the law required the classification and containment of people considered mentally disabled, lay understanding of disability was much more nuanced. Most believed that people operated on a gradient of mental functioning and classification, and hesitated to place people in the overdetermined categories of lunatic or idiot and thus disenfranchise them. One would think that this type of community determination is anathema to the modern era, where lunatics and idiots are expected to be civilly dead and enclosed in institutions.⁶ This chapter illustrates that by contrast, not only were people within and outside of institutions part of the community, they participated politically despite their ostracization.

Moreover, these hearings are the tip of the iceberg. As the hearings occurred all over the country, they strongly suggest that despite laws to the contrary, many alleged lunatics or idiots did vote, unless or until they were plucked out and made the subject of a post-election dispute. Ordinary people's legal consciousness developed in two ways: with the management of a typical election, where lunatics and idiots voted, and with the congressional hearings, where people learned that depriving lunatics or idiots of the vote was important enough to be raised in a congressional hearing. Like in Chapter 4, where people witnessed the spectacle of litigation, here, ordinary people learned about law and disability through disputes.

⁶ See, e.g., Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*. New York, Vintage Press, 1988; Lennard Davis, *Enforcing Normalcy: Disability, Deafness, and the Body*. New York: Verso Press, 1995.

Election mechanics

In a typical election, voters would assemble in a privately owned building marshaled for election. Political parties stationed people near the polling place to distribute tickets, which would have the candidates' names printed upon them, along with a symbol for illiterate voters. Voters would receive a ticket designated for a particular political party, and then stand upon a raised platform. They would then hand their tickets through a window to an election judge, who were local officials drawn from the political parties on the ballot. These judges would deposit the tickets in a ballot box. Election clerks would record the names of the voters as the judges recited them. Thus, voting was a highly public and spectacular event and voters were extremely visible when they voted. Political parties would delegate challengers who would stand near the platform and challenge voters of questionable status who voted for their opposition. The election judges resolved these disputes and challenged voters would have to swear an oath attesting to the truthfulness of their assertions. Therefore, the congressional hearings involved questioning the status of voters whose status had already been resolved at the polling place, or whose votes were not initially questioned.⁷ Deciding who was a valid voter involved a mix of community knowledge, on-the-spot assessments, legal and medical standards, and government documentation.

⁷ Richard Bense, "The American Ballot Box: Law, Identity, and the Polling Place in the Mid-Nineteenth Century," *Studies in American Political Development* 17 (Spring 2003), 7. In most elections, voters did not register in advance, so this was the first instance in which status issues could be questioned. Bense, *The American Ballot Box*, 10, 6-7.

It was not sufficient to show that someone had a history of lunacy or idiocy; it was necessary for someone at the election to know – and importantly – act, on this information. It also required someone to make an assessment of the mental status of the person on that day. Thus, election management relied upon community knowledge – both present and past – to provide a classification system for voters.

Approaching the ballot box was not always an easy feat. Elections were often rowdy carnivals. Saloons were the most likely polling places, and political parties offered alcohol as refreshment – or bribes – to waiting voters and even to election officials. Partisans distributed tickets and provided boisterous support for their political parties. Loitering men would heckle voters of the opposite party.⁸ Unfamiliar voters were received with suspicion by both election challengers and judges.

What might be expected is that notorious lunatics and idiots would then be stopped at the polls and not permitted to vote. For many of the alleged insane or idiotic voters, though, the challenged election at issue during the congressional hearing was not their first attempt at voting. Despite a label of insanity or idiocy conferred by a state proceeding or community consensus, these men were longstanding voters. The congressional hearing was an interruption to the general practice of voting, despite community knowledge of their mental status. John D. Hawkins saw David Norris come up to the polling window and he knew that Norris had voted before. He did not object

⁸ Note that the legal standard was for a man of ordinary courage to be able to make his way to the polling place. Bense, *The American Ballot Box*, 6, 12.

to Norris voting, even though he “knew that he was crazy,” because he “didn’t know that that was an objection.” L.J. Lemert, an election trustee, claimed that James Laycock was “counted as being insane by the neighbors.” He also had a history of voting. Samuel Thompson always “claim[ed] to belong to the Democratic party, and to vote that ticket” and indeed, voted Democratic at the polls, though Craig Filson, the director of the infirmary where Thompson lived, was skeptical of Thompson’s mental acuity. Thompson was never challenged at the polls; Filson speculated it was because the Republicans were so strong they did not need to challenge Thompson’s vote. He believed that Thompson was a Democrat because his former boss at the hotel, Mr. Cowan, was one as well. William Davidson, the infirmary superintendent, declared that Cowan “made [Thompson] mind just as he would one of his own children. And whenever he told him to do a thing he would go and do it. I think if Mr. Cowan would give him a ticket and tell him to go and vote, he would go and vote it.” Indeed, five years previous, Cowan gave Thompson a Democratic ticket in the hotel office. John Chandler, an election inspector, described Henry Clay as “very old and decrepit, and said to be blind.” S. Brown Allen had sent his horse and buggy for Clay on Election Day, as he had been doing for years. Thomas Langdon was adjudged an idiot by the Pulaski circuit court. He was also a voter for the previous thirty years and voted for Sidney Barnes in his race against George Adams. Henry Dunkle voted in the contest between Andrew Curtin and Seth Yocum. He was declared a lunatic under proceedings in the Centre County Common Pleas court twelve or fifteen years prior to the election.

He still had a guardian committee when he voted. R.F. Seal testified that Ayers Carson had been voting for the past six years. Six years ago, his vote was challenged, and the election board decided to let him vote. He was not challenged in the election at issue.

John Colescott, an acquaintance of Ayers Carson for the past ten or twelve years, noted a few instances of Carson's peculiar conduct implicating his mental condition. Colescott testified:

The first time I ever saw him I was passing by his mother's house. I heard some one stood and holloed at the top of his voice. I passed there several times, and he has acted in the same manner. I saw him again in 1864; he came up to the polls, deposited his ballot on the window-sill and walked away from two rods or more before his ballot was taken by the inspector, seeming to not know what he was doing. His vote was challenged; he was then called back; he said nothing during the time; his friends did all the talking for him. It was about the same thing over again in 1868. In 1868 he came up to the polls and offered his vote, and it was challenged, but the inspector took it. There was a man by the name of Hart Bishop told him to go on home; that they would attend to his vote.⁹

Robert Nichol said that the "only trouble" the family could see with his brother John "was he couldn't remember dates or anything of that kind." He did not believe that John was insane or an idiot "by any means," though he also acknowledged that "he is no scholar." He was a longstanding voter whose vote was never challenged. Corwin

⁹ Testimony of John D. Hawkins, *Campbell v. Morey*, at 561. Testimony of L.J. Lemert, *Delano v. Morgan*, at 538. Testimony of Craig Filson, *Jonathan H. Wallace v. William McKinley, Jr.*, H.R. Rep. 1548 (1884), at 165. Testimony of William Davidson, *Wallace v. McKinley, Jr.*, at 168. Testimony of John Chandler, *Horatio Bisbee, Jr., v. Jesse J. Finley*, H.R. Ms. Doc. 10 (1877), at 173. Testimony of S. Brown Allen, *Bisbee, Jr., v. Finley*, at 195. Testimony of James Langdon, *Sidney M. Barnes v. George M. Adams*, H.R. Ms. Doc. 13 (1869), at 35. Testimony of Henry Dunkle, *Andrew G. Curtin v. Seth H. Yocum*, H.R. Ms. Doc. 14, pt. 4 (1879), at 3285. Testimony of R.F. Seal, *David S. Gooding v. Jeremiah M. Wilson*, H.R. Rep. 41 (1872), at 269-70. Testimony of John Colescott, *Gooding v. Wilson*, at 271.

Smith saw Warren Lytle vote for the Democratic party. When he saw Lytle with his Democratic ticket, he went to him and “asked him if he didn’t intend to scratch his ticket a little, and he said, “No, you can’t come that over me; I am a little too old for you fellows,” and said that “this [exposing his ticket] is what I always vote; I always vote a clean one.” He then walked to the polls and directed his ticket.¹⁰

As these previous examples indicate, the aid – or hindrance – of others, could prove crucial to facilitating the vote. Apparently, helping family members or neighbors was more important than following the law. Even if people had ideas or speculation, to clarify them would require a conversation with the person in question and people were unwilling to take that step. It may have been too uncomfortable to tell a loved one not to vote, especially given the reason, or, there may have been selfish reasons – political partisanship meant getting everyone possible to the polls. Often these assistants – or directors – were family members. B.F. Hawkins brought his brother William to nearly every election. Thomas O’Bryan, a member of the board of supervisors, noted that G.W. Prather voted with his father, who was a Republican, and a “strong advocate in favor of M.E. Cutts, and furnished said Prather his ticket and come to the ballot-box with him, and instructed him who to pass his ballot to, and he done as he was directed to, and I think that he voted the Republican ticket, and I know his father solicited him to so vote.” On the day of the election, O’Bryan said that Prather “looked like a fool or idiot, from his vacant and unmeaning state, with his mouth compressed, and would stand in

¹⁰ Testimony of Robert Nichol, *Campbell v. Morey*, at 158. Testimony of Corwin Smith, *Campbell v. Morey*, at 290.

one position until moved by his father, staring at one object vacantly, and he did not even give his own name, but it was given by his father; and from these facts and others I consider him an insane person; and from his appearance I think he did not comprehend what was going on about him." O'Bryan did not believe that the twenty-five-year-old Prather had voted before. In the election of Horatio Bisbee, Jr. v. Jesse Finley, Bishop Blackwell contended that Aaron Allen was "carried to the polls by his father, and allowed to vote, which he did, for Horatio Bisbee, he (Allen) being an idiot." Walter Moore, the U.S. Supervisor for the election, testified that "a party was carried up there who looked like an idiot; I did not hear him speak; he was carried up three times by another person, who made application for him to be allowed to vote; he was challenged as an idiot, and his vote refused as an idiot." Alex Johns, the acting U.S. Deputy Marshall, and a Republican, led him up. Moore said that no copies of judgment of insanity or lunacy were produced at the election, but "the party challenged as an idiot was asked what he wanted to swear to, and he did not say anything; he did not seem to know what he was there for; nor could I gather from him what he was there for." It did not occur to Moore or any of the other election inspectors to tell him why he was there. He was not aware that it was the duty of an election inspector to tell challenged voters of the legal requirements. He said: "the vote of the idiot was excluded because he was challenged as an idiot, and he did not satisfy the inspectors to the contrary." When asked directly if Nathaniel Martin and William Dickerson were idiots, Ira Condit, a commissioner, responded: "I don't know really whether I could say what constitutes an

idiot." He continued: "They are neither of them calculated to take care of themselves. Martin is known by the name of 'Doc.'" As Martin did not know his actual name, Condit told him what it was when he came into vote. As for Dickerson, Condit said: "I suppose, from what transpires at the polls, that he is the same fix as Martin. His friends always come with him; give his name for him." Martin's father tried to keep him away from the polls for several years "by not letting him know he was of age, until the excitement got very high. He found it out and his brothers got him to voting." As for Dickerson, the election was held in his brother's house. Dickerson had been voting for the past four or five years, while Martin had voted for the past seven or eight. As far as Condit knew, neither one had been challenged when they voted. John Whitehead testified that with respect to his brother Jesse's voting, sometimes [Jesse] goes by himself; sometimes he goes with his father; sometimes with me, but not lately." Mrs. Lydia Hill, Calvin's wife, testified that Calvin's mind was "frustrated at times; at other times he talks quite rational. He reads the Tribune and Republican paper some, and then asks me to read it to him. Seems very anxious to find out all he can." She accompanied him to the polls because "I thought he had a right to vote." She contended that Calvin knew he was putting in the republican ticket, adding "[h]e told me before he started from home that if he voted at all he would vote the republican ticket. Said he would not vote any other ticket." Hill had a sunstroke five years prior, and his mental condition had deteriorated since then. Lydia said that Calvin chopped wood and did chores about the house, but that was all he could manage. As he had not been "down

street for more than a year, and he did not know where the [polling] place was," he wanted to her to go along so she could help him vote.¹¹

Some neighbors assisted their fellow voters despite their misgivings about their mental status. Indeed, some election officials allowed people to vote despite being certain that they were idiots or insane. Bartley Sutter, an election judge, said that William Ray's vote was challenged at the election. Sutter claimed that "as one of the judges of the election that we were incapable of deciding whether he was insane or not." According to the community, he had heard that Ray had been in the asylum, but he did not know for sure. Samuel Hamilton saw Benjamin Rutter vote. He was "standing near the polls when Jeremiah Zigler and Josiah Gardner brought him near to the place of voting in a buggy; they helped him out of the buggy, and he went to the place of voting; there was some disturbance about who he was going to vote for. I being very well acquainted with Mr. Rutter, went to him and asked him what ticket he wanted to vote; he told me he wanted to vote the republican ticket; he then pulled a ticket out of his pocket and showed it to me; I told him that was right if he wanted to vote the republican ticket; I saw him put that same ticket in the hole where they put them in, and the trustees took it from his hand." Hamilton said that Rutter has voted

¹¹ Testimony of David Harner, *Campbell v. Morey*, at 472. Testimony of Thomas O'Bryan, *J.C. Cook v. M.E. Cutts*, H.R. Rep. 1961 (1883), at 130. Testimony of Thomas O'Bryan, *Cook v. Cutts*, at 130. Testimony of Bishop Blackwell, *Bisbee, Jr. v. Finley*, at 72. Testimony of Walter Moore, *Bisbee, Jr. v. Finley*, at 146. Testimony of Ira Condit, *Delano v. Morgan*, at 42. Testimony of John Whitehead, *Delano v. Morgan*, at 105. Testimony of John Whitehead, *Delano v. Morgan*, at 105. Testimony of Lydia Hill, *Delano v. Morgan*, at 198.

before, but “he wasn’t in the habit of going there unless he was taken by some political party, since he became deranged.” Hamilton believed that Rutter’s derangement was from whiskey drinking, as he had “seen him have many a whiskey fit.” Also, Rutter had had a guardian for twelve or fourteen years, according to Hamilton. Though Franklin Gilbert did not think that Riley Garlinghouse was a person of sound mind, he took Garlinghouse to the election in his wagon and got him a ticket. Unsurprisingly, Garlinghouse voted for the Republican Party, as did Gilbert. Garlinghouse lived with Gilbert, who claimed that Garlinghouse knew about the election beforehand because the family had spoken about the election in the house prior to traveling to the polls. Isaac Odell, an acquaintance of Benniah Keifer, saw him nearly every day. “As well as [he could] judge” from his “observation and acquaintance with him, he is idiotic, and incapable of attending to business or taking care of his estate, and has but very little, if any intelligence, and has a guardian to take care of his estate.” Though Odell saw Keifer vote, he did not challenge him. A.G. Cleek, the clerk of the court, testified that he “had a conversation with Col. A.G. McGuffin within the last two weeks, and the reason why he did not assess Henry Stafford was that he considered him an idiot and always had been an idiot from the time he was born, as he had known him all his life.” Cleek said that “as to political parties,” Freeman “knows no more than that stove, and he would vote any way that certain parties would tell him or give a paper to put in.” When Henry Warnka voted, James Fry, the election clerk, wrote down his name and numbered it on the poll list. Warnka voted the open Democratic ticket. Fry did not think that Warnka

was capable of knowing who he was voting for, and he had never discussed politics with him. Joseph Lucas had accompanied Warnka to the polls and given him a ticket. Fry believed that Warnka was entirely under Lucas's control. He continued: "When Lucas brought him to the table to vote, Judge Thompson, one of the inspectors, remarked, 'Here comes poor old Warnka. We cannot take his vote.' I remarked, 'Being a neighbor of mine, I shall not object,' being there in the capacity of United States supervisor of election, I called the attention of Colonel Bower to the fact. He made no answer, and his vote was deposited in the box."¹²

Self-motivated

Michael Killeen, John's father, clarified that John was not actually released from the asylum: "at the time he came home, he made his own way home; as soon as the guard turned his back he jumped the fence and took the country road all the way from Dayton." John found out about the election and his father was worried that he wanted to vote: "He spoke to me about voting when the election was coming on, and I told him he had better not, because I was afraid if I wasn't with him, they would object to his vote on account of his age. So I said, 'you had better not,' says I, 'for if you go there and vote they will compel you to work the roads. If you go there and vote you will have two

¹² Testimony of Bartley Sutter, *Delano v. Morgan*, at 657. Testimony of Samuel Hamilton, *Delano v. Morgan*, at 616. Testimony of Franklin Gilbert, *Delano v. Morgan*, at 48. Testimony of Isaac Odell, *Gooding v. Wilson*, at 183. Testimony A.G. Cleek, *John E. Massey v. John S. Wise*, H.R. Ms. Doc. 27, pt. 1 (1882), 401. Testimony of James Fry, *Bisbee, Jr., v. Finley*, at 440.

days to put in on the roads as soon as they found out you are of age.”¹³ Regardless, John went out and voted anyway.

Though most of the challenged voters enlisted the help of acquaintances, family, or neighbors, others, like John Killeen, took the initiative to vote without anyone’s help and despite obstacles placed in their path. It took courage to come to the polling place despite knowing what people would think. It also took mental savvy to navigate the political process alone. For these people, it probably was important to make this expressive move of political participation and community belonging. While there is no evidence of “rights talk” on the part of these people, their determination does indicate the importance of the vote to them. John F. John described his brother-in-law Millard Apple as having “hardly ordinary” intelligence and judgment, though he believed he had reason and judgment enough to vote. Apple had a guardian when, according to John, he was pronounced an imbecile in 1876. Apple needed somebody to direct him when it came to work, but when it came to elections, John asserted, Apple was “a Democrat, and could not be convinced to vote any other ticket except he was deceived. He is naturally a Democrat.”¹⁴

Henry Philips was afraid when he voted in the case of E.W.M. Mackey and M.P. O’Connor because he was worried “his people would treat him bad.” He intended to vote for the Democratic Party. He ended up not voting, because he said “the pressure

¹³ Testimony of Michael Killeen, *Campbell v. Morey*, at 956.

¹⁴ Testimony of John F. John, *Campbell v. Morey*, at 282.

was too hard for him." A.F.H Dukes testified that he did not know why Philips was insane and in the lunatic asylum, but noted "there is a colored man [Daniel Thomas] that lives on the same place with him says that it was his treatment after the election caused him to go crazy." Dukes said the people he was worried about were "the colored people" because of his intent to vote Democratic. He had previously voted Republican. This was Philips's first time in the asylum, but Dukes said, "he did go crazy before." He added: "His mind is very good when he is not crazy." A man named Sullivan was refused at the polling place in the election of Thomas Gunter v. W.W. Wilshire because he was insane or an idiot. R.W. Ward, one of the registrars, told Sullivan as he was applying for registration and preparing to take the oath, that "if he took it, he would swear to a lie." Ward replied that he "thought he was not entitled to register and refused him," based on Sullivan's answers to his questions. Harvey Winn, a teacher, and also the clerk for the board of registration and review, witnessed Sullivan's attempt at voting. He testified:

"While registering Hickey Township a man by the name of Sullivan applied for registration and was rejected. Before he got out of the house he turned to Ward and commenced cursing him, and told him this thing was not done with; that the worst hadn't come. He then went out of the house, still kept cursing Ward, and said he intended to whip him. Ward then called upon me to go to the door and try to quiet him, which I did. He continued to curse. Ward then went to the door, and Sullivan dared him out of the house for a fight. Ward then went out of the house, and a crowd of twelve or fifteen men on the right of the door, some of whom were armed, fell back a little and in line, some of them with their hands on their pistols. While Ward was talking to Sullivan outside of the house, a young man by the name of John Bernard came to me and stated that it was a good thing that I was there; that but for it there would have been difficulty, and he did not

know but what there would still be difficulty. I then requested him to suppress the difficulty, but he did not seem to have much disposition to do so. I then further requested him if he could not do so on Ward's account, he having stated he could not, to do so on my account, which he consented to do. Men, however, continued to arrive, and the complaints and loud talking of Sullivan and his friends on the outside continued; and one of our party having reported to Ward that he had heard the remark made on the outside that there was but four of them, (meaning the president of the board of registration and his attendants,) and we could clean them up, (meaning the people on the outside of the house,) Ward concluded to close the books of registration through fear of being mobbed, and did so."¹⁵

Winn added that Ward had been drinking, and he proposed that Sullivan fight him: "after Sullivan told him he could whip him, Ward told him that if nothing else would do him but a fight he would fight him with pistols; if he would go in the room they would fight it out by themselves, as he was crippled, and that he would divide his weapons with him."¹⁶ Sullivan, though, according to Winn, was in his shirtsleeves and probably unarmed.

Jacob Fritz voted for Charles Van Wyck in the contest against Greene. Andrew Bell testified that Fritz came up to the polls with his tickets, and Van Wyck "pulled him back from the polls." Bell said that Fritz "made a second effort to get to the polls. Mr. Van Wyck drew him back and Mr. Fritz made the remark that 'if I must vote for you,' or words to that effect, 'take the ticket and fix it yourself.'" Van Wyck then took the ticket,

¹⁵ Testimony of A.F.H. Dukes, *E.W.M. Mackey v. M.P. O'Connor*, H.R. Ms. Doc. 15 (1880), at 540.
Testimony of R.W. Ward, *Thomas M. Gunter v. W.W. Wilshire*, H.R. Ms. Doc. 174 (1873), at 597-98.
Testimony of Harvey Winn, *Gunter v. Wilshire*, at 619-20.

¹⁶ Testimony of Harvey Winn, *Gunter v. Wilshire*, at 619-20.

crossed Greene's name off and wrote in his own. William Jordan also saw Fritz vote: "When Fritz came in to vote, he took his ticket just as he came into the door and went up to the table where the inspectors were. Mr. Van Wyck went between him and the table. He then went around behind Mr. Van Wyck to come to the table again, when Mr. Van Wyck walked between him and the table again. Then he turned around and they had some talk, I could not hear what it was, and he gave his ticket to Mr. Van Wyck. Mr. Van Wyck then walked to the table and marked some name that was on the ticket, then he wrote on each side where he made the mark. He gave the ticket to Mr. Fritz and he voted it."¹⁷

When Luman Dibble went to the polling place, he told his son Silas, "Come Silas, it is time to go home." Another person asked: "Silas, have you voted?"¹⁸ Silas replied: "No, they won't let me vote." As Luman and Silas made their way out, Jason Collins, a member of the board of trustees, said to Luman "I want you to take Silas back into the hall" because they were going to look at the law to determine whether Silas could vote. Luman saw some of the board members take down a law book, he supposed the Ohio statutes, to examine. Luman noted: "I understood, but not directly, from the trustees that they did not like to take the responsibility of allowing him to vote." Three doctors were brought in to consult with the board of trustees. After, a member of the board said

¹⁷ Testimony of Andrew J. Bell, *Charles H. Van Wyck v. George W. Greene*, H.R. Ms. Doc. 27 (1868), at 7.

Testimony of William Jordan, *Van Wyck v. Greene*, at 9-10.

¹⁸ Testimony of William Jordan, *Van Wyck v. Greene*, at 9-10.

that Silas could vote, and handed him a ticket. All of the election judges were Republicans and Luman presumes that Silas voted the Republican ticket. This was his first vote.¹⁹

Party direction

Political partisans wore multiple hats during the election; they managed it, they challenged votes, they provided knowledge, and they pushed people to vote despite evidence of their dubious mental states. Patrick Higgins was the guardian of Michael Higgins. At the time he was appointed guardian three years previous, Michael was in the Newburg Asylum for the Insane. He was then sent to the poor house, before coming home to live with Patrick. Michael went to the polls with a group of four or five people that he worked with on the railroad. The group was all Democrats. Michael reported that “some fellow gave him his ticket” and he did not know who he voted for.²⁰

Samuel Axtell was not pleased with J.Y. Reeve’s behavior as an election judge. Axtell was inside the polling room as an inside challenge. When Calvin Hill’s name was announced, someone outside wanted to challenge the vote. Reeve ignored the challenge and tried to put Hill’s ballot in the ballot box. Axtell said to him, “Mr. Reeve, that vote is challenged.” Reeve replied, “*Shit*, there isn’t any use of this.” He put the ballot in the box anyway and then later asked about the nature of the challenge. Axtell claimed that

¹⁹ Testimony of Luman Dibble, *Delano v. Morgan*, at 23.

²⁰ Testimony of Patrick Higgins, *Wallace v. McKinley, Jr.*, at 176.

Hill was “under the control of the Republican party, and he would vote just as they would direct.” “Friends of Delano” brought Hill to the polls. Axtell believed that Hill was “almost idiotic.” Marshall Beam also thought that Reeve “was unbecoming as an officer of the election — partial and partisan in its character.” Beam also worked as an election challenger, and was the one who challenged Calvin Hill. When Beam heard Hill’s name called, he “arose and told Mr. Reeve that I objected. He then had the ballot folded in his hand, and was ready to place it in the ballot box. He looked at me, and immediately thrust it into the box, and rather coolly told me that I was too late. I replied, “Mr. Reeve, you should certainly give us a chance to question a man.” He replied, ‘That man is old enough to be your father.’ I told him it mattered not; that I challenged him on account of imbecility, and that he at least ought to give us a chance to establish it. He made no reply.” William Krigbaum had known Hamilton Hopper and saw him going to the election with his father. He claimed that “when the political excitement would get high they would bring him out” to vote in Morgan county. Krigbaum believed that Hopper’s mind “appears to be tangled at times, and I think whichever party would get to him first would get the vote; he is very changeable; I couldn’t for my part believe what he would do without I would see it; he is very easily persuaded. At times he talks well enough, and at other times he talks foolish. At all times he talks too much; most of the time he talks simple.” According to the neighborhood, “it was said Mr. Morrison went past my house, and I think William Edgill was with him, and went to Hopper’s to get them to go to the election, and if he,

Hamilton, would go, that they would — James Owens and him — would buy him a coat and a pair of shoes out of Silvey’s store.”²¹

Institutional control

Although one might think that institutionalization would be decisive evidence of voting ineligibility, there is abundant evidence that institutionalized people did vote. Their supervisors had an incentive to have them vote for their party of interest. The claim that they screened institutionalized members was probably a defense mechanism aimed at diffusing accusations of partisanship and political corruption that were key to disenfranchising lunatics and idiots in the first place, as evidenced in the first chapter. So, instead of portraying themselves as political partisans, institutional supervisors placed themselves in the role of election officials. Vote denial was their defense of their role in the election. Part of the reason for the screening may have been the obvious spectacle that these men evidently created while they were at the polls. Since they came in already marked as mentally deficient, and they were already pulled out of the community, it was probably a lot easier for election officials to challenge them. Unlike lay people, superintendents certainly knew about the law and thus were savvy about how to skirt it.

²¹ Testimony of Samuel P. Axtell, *Delano v. Morgan*, at 180. Testimony of Marshall Beam, *Delano v. Morgan*, at 215. Testimony of William Krigbaum, *Delano v. Morgan*, at 647.

Institutional administrators acted as gatekeepers for determining whether their residents voted. Zebulon Dickinson, an infirmary superintendent, claimed he conscientiously screened out his infirmary residents, so that only lunatics legally competent to vote came to the polls. Zebulon Dickinson was the superintendent of the infirmary and a Democrat. The infirmary wagon made 2 shifts from the infirmary to transport voters, including Charles Beebe, John Fleck, Noah Potts, Thomas Risley, Robert Morris, and George Robb, all accused of insanity or idiocy. Dickinson explained that Thomas Risley was too incapacitated to testify “being too feeble to help himself to any great extent” and John Fleck was too mentally incapacitated to testify as well. In his report to the town assessor, “John Fleck, Thomas Rizley, Noah Potts were returned as insane, Charles Beebe as idiotic.”²² He drew pay for keeping Noah Potts as a lunatic.

As institutions were partisan operations, facilitating votes for the party in power could prove useful. Administrators not only provided transportation, they acted as witnesses and poll instructors. William Dennison, the deputy probate judge, said that in his judgment, Charles Beebe was an imbecile. He claimed that Beebe “has always been controlled and voted by the superintendent of the infirmary, and hauled up.” He thought that several of the infirmary residents were “wholly incompetent to vote, and that their politics are always the same as that of the superintendent.” Four people – Joseph McFarland, Henry Rossimann, D.G. Moore, and Peter Mullins – who lived at

²² Testimony of Zebulon Dickinson, *Campbell v. Morey*, at 275. Testimony of William Krigbaum, *Delano v. Morgan*, at 647.

the insane asylum and fifty-four people from the poor farm voted in the contest between Le Moyne versus Farwell in Illinois. "These persons were carried to the voting place in the poor-farm ambulance and in wagons, were a hard-looking crowd, a good many appearing to be too old and infirm to be workingmen; some were lame and one blind; they certainly were not farmers," said Norwood Park. The witness for all fifty-eight at the polls was John Walsh, the assistant warden of the Cook County insane asylum. De Clermont Dunlap, who was at the polls peddling tickets, observed: "There was the lame, the blind, and the halt, and most everything else. They were brought there in the county ambulance and one or two teams that were provided by the county-house," accompanied by the warden and the assistant warden. The election judges objected to their voting. James Winship, a lawyer and election clerk, said that "it was exceedingly difficult to get any information as to their status, as to whether they were paupers or otherwise, from the fact that they refused to answer questions. They presented affidavits, and acting under the advice of Mr. Kimberly, the warden of the poor-house, refused to answer questions as to whether they were paupers or not." Winship "objected strenuously to their being allowed to vote, and two or three of them, I think, were rejected by the judges in the state. Mr. Kimberly blustered loudly, threatened to prosecute the judges, and have them in jail...and after rejecting two or three the judges allowed the rest to vote."²³

²³ Testimony of William Dennison, *Campbell v. Morey*, at 309. Testimony of Norwood Park, *J.V. Le Moyne v. C.B. Farwell*, H.R. Rep. 385 (1876), at 19-20. Testimony of De Clermont Dunlap, *Le Moyne v. Farwell*, at 266. Testimony of James Winship, *Le Moyne v. Farwell*, at 291.

David Beecher lived in the poorhouse and was characterized as “very crazy” yet he managed to vote in the contest between Alexander Coffroth and William Koontz. David Shaner, who also lived in the Adams County poorhouse, testified that “David Beecher is at this time insane; they keep him confined.” P.D.W. Hankey, who was working the polls, saw Beecher vote along with the other members of the poorhouse: “They were brought to the polls, most of them, on a wagon by Jacob Culp, who was at the time the steward at the poorhouse, and by Alfred Slonecker, and they and Cornelius Daughterty kept the men together, supplied them with tickets and voted them.” Cornelius Daughterty, by contrast, contended that David Beecher “was of sound mind on the day of the election.”²⁴

Deafness

Deaf people faced two significant difficulties when attempting to vote. First, voting required use of the voice for identification and in the case of a dispute. Second, election laws did not mandate assistance for people with physical disabilities. For the thirteen deaf men singled out in the congressional hearings, though, they were challenged because of what their deafness signified. Was their lack of hearing their only impediment, or was it indicative of mental impairment? The men were not challenged merely for being deaf, but rather because their deafness was taken as a symptom of

²⁴ Alexander H. Coffroth v. William H. Koontz, H.R. Rep. 117 (1866), at 96. Testimony of David Shaner, Coffroth v. Koontz, at 97. Testimony of P.D.W. Hankey, Coffroth v. Koontz, at 97. Testimony of Cornelius Dougherty, Coffroth v. Koontz, at 207.

their possible idiocy.²⁵ While there was elite debate occurring between manualism and oralism partisans, when it came down to election mechanics, there was not really a good way to facilitate either one, although it was probably easier to speak English. As most deaf people were not educated in a deaf school, their communication with others was a pidgin of either sounds or signs. It basically came down to the benevolence of others to determine whether this was enough to allow them to vote and for which candidate.

During this time period, deaf citizenship in general was at issue. Advocates for the deaf fought for deaf education under the weight of assumptions that deaf people were not necessarily educable, and if so, to a limited degree. This bias was evidenced in the congressional hearings as well. Infirmary doctor Dr. G.W. Moore was asked the question “suppose a man to have been born deaf and to have been all his life a deaf mute, and never learned to read or write, and never to have learned to communicate with in the deaf and dumb language or signs, what possible means would have to acquire any knowledge in regard to the fitness of men for office or in fact anything in regard to parties or politics?” He replied: “I would say it was an utter impossibility for him to acquire any information whatever on any subject.” The Census Bureau, in a report on the 1880 census, calculated that out of 33,878 total deaf and dumb people, 2,122 were deaf, dumb, and idiotic and that “the correlation between deafness and

²⁵ Strikingly, the first example of a mental status challenge in Richard Bensel’s account of congressional contested hearings is of a deaf man, although Bensel does not discuss his deafness as the trigger for the case.

idiocy seems to be three times as marked as that between deafness and blindness." To be sure, though, they also noted, "it is quite possible that in the census of 1880 some deaf-mutes, owing to their want of education, are improperly classed as idiots; and also some idiots are classed as deaf-mutes because they do not speak, though in fact they have some hearing."²⁶

Scholars tried to distinguish between deaf people of typical intelligence and those were idiotic. Alexander Graham Bell, in an article titled "Fallacies of the Deaf," contended that "[t]he use of the word 'mute' engenders another fallacy concerning the mental condition of deaf children. There are two classes of person who do not naturally speak: those who are dumb on account of defective hearing, and those who are dumb on account of defective minds. All idiots are dumb." He continued: "the greater number of 'mutes' who are accessible to public observation are dumb on account of defective minds and not of defective hearing. No wonder, therefore, that the two classes are often confounded together." The "hard task," Bell lamented, "of every principal of an institution for the deaf and dumb" was "to turn idiots and feeble-minded children away from his school." W.W. Turner concurred, noting that the American Asylum for the Deaf did not admit "helpless idiots or maniacs."²⁷

²⁶ G.W. Moore, James E. Campbell v. Henry L. Morey, H.R. Rep. 1845, pt. 1 (1884), at 324. The Defective, Dependent, and Delinquent Classes, Congressional Serial Set, (1888), at xxxviii.

²⁷ Alexander Graham Bell, "Fallacies Concerning the Deaf," *American Annals of the Deaf*, 29, (1884), 34. W.W. Turner, "Idiots and Their Education," *American Annals of the Deaf*, 23 (1878), 121.

Bell noted that legally, early in the century, “deaf mutes were classed among the idiots and insane; they had no civil rights, could hold no property; they were irresponsible beings.” Legal treatises agreed. Leonard Shelford, in *A Practical Treatise on the Law Concerning Lunatics, Idiots, and Persons of Unsound Mind* noted in 1833 that “[p]ersons born deaf, dumb, and blind, are looked upon by the law as in the same state with idiots; for, the senses being the only inlets of knowledge, and these most important inlets being closed, all ideas and associations belonging to them are totally excluded from their minds.” While deaf and dumb people were presumed idiots by the law, they could overcome that presumption through “express[ing] their meaning by writings or signs.”²⁸

Despite famous cases such as Helen Keller and Laura Bridgman, the average deaf person in the 1800s struggled to obtain an appropriate education. Scholars clashed as well as to what composed an appropriate education for a deaf person. Oralists, or those who advocated for lip reading and speech training, battled manualists, or those who favored sign language. Oralists like Alexander Graham Bell and Horace Mann believed that it was better for deaf people to assimilate into the larger hearing world. They told parents not to teach sign language or sign to their children in hopes that the children would learn English. Manualists, such as Edward Gallaudet, thought that manualism

²⁸ W.W. Turner, “Idiots and Their Education,” *American Annals of the Deaf*, 23 (1878), 37, 3.

allowed deaf children to learn their native language — sign language — and interact with other deaf people.²⁹

In the second half of the nineteenth century, oralism was in its ascendance. Thus, a deaf child who was able to obtain an education was likely discouraged from using sign language, and instead trained to assimilate with other hearing children, lip read, and speak English. For the men who voted, though, only one was able to speak English. Robert Morris was both deaf and blind. He lost the ability to read and write when he lost his sight. He began losing his sight and hearing early in his life and both senses gradually worsened over time. At the time of the 1884 election between James E. Campbell and Henry L. Morey in Ohio, Morris was 73 years old. He lived in the town infirmary. The infirmary superintendent Zebulon Dickinson characterized Morris's speech as "clear, plain, distinct, and quite loud." He was unable to "carry on an ordinary conversation" because of his hearing, however. Dickinson did not believe that Morris could communicate via sign language, writing, or Braille. Dickinson testified that Morris was an avid voter: "[w]hen there is an election, any one giving him a slip of paper the size of a ticket, at any time, he would say, oh, there is an election, and, I want a Democrat ticket. Whenever you would hand him a paper of that kind he would think there was an election, and express himself in that way." Morris was not challenged for his vote on the day of the election, and he had a history of voting in the Batavia precinct for the past eight years. The reason for the challenge was because his name was put on a

²⁹ Douglas Baynton, *Forbidden Signs: American Culture and the Campaign Against Sign Language* (Chicago: University of Chicago Press, 1998).

list requested by the township assessor of idiots, insane persons, and deaf and dumb persons in the infirmary. The superintendent testified that Morris was in good mental condition.³⁰

John Andrews also attempted to communicate with hearing people using his mouth. John lost his hearing at six months old when his sister blew a horn directly into his ear. He was able to make out some words if people spoke very loudly directly to him. John's father Philip testified that John "cannot speak intelligibly" nor read or write. The family never attempted to educate John in sign language. Instead, John used his mouth to make motions. Philip was able to "make out a few words." Philip also testified that John was an idiot. He believed that John was "not capable of doing any business for himself at all" and did not know anything about politics or religion, though John regularly attended church on Sundays and was aware of the Civil War. Philip tried to tell him what the Civil War was about, "but he could not understand about it; he was very much afraid." Generally, the family was able to make John understand some things by "go[ing] and show[ing] him what to do." They were unable to convey their "wishes to him on general subjects." Philip did not believe that John had any knowledge of the candidates for office. Philip tried to tell him about the elections, but thought that John did not understand him. John did not attend any political meetings, but he had encountered Delano, one of the candidates, in town. John rode to the election with Harvey Cox in Cox's wagon. Cox believed that John had good sense and

³⁰ Testimony of Zebulon Dickinson, *Campbell v. Morey*, at 275.

ordinary mental capacity. He believed that “his present condition results from want of education.” He added: “I know he is a good hand to work. He has worked some for me. I see him pretty much every Sunday (dressed up) going to church. I have seen him riding around Sundays on horseback with the young men, and am informed that he was going to see the girls.” Cox spoke to John loudly in order to have a conversation with him. Ultimately, the Congressional committee for idiocy rejected John’s vote.³¹

William Beazley received an education at the Deaf and Dumb Asylum in Danville. He worked as a painter and had voted in the past without incident. His deafness and possible mental status was flushed out because he was challenged because it was suspected he had not lived in the county for twelve continuous months prior to the election. Though Amos Holler was listed as deaf and dumb in the hearing of *Horatio Bisbee, Jr. v. Jesse J. Finley of Florida*, he testified on his own behalf. Holler worked as a shoemaker at the Deaf, Dumb, and Blind Institution. He was asked to give money for the election by Captain Davies, the steward of the institution. His wages were garnished \$10 out of the \$45 a month that he was paid for his work. A.P. Moore was the only man who communicated via writing. He had been educated and, as an adult, was sometimes hired out to work.³²

³¹ Testimony of Philip Andrews, *Delano v. Morgan*, at 209. Testimony of Harvey Cox, *Delano v. Morgan*, at 212.

³² Testimony of Alexander McSneed, *W.C. Anderson v. J.S. Chrisman*, H.R. Ms. Doc. 11, (1860), at 72. Testimony of Amos Holler, *Bisbee, Jr., v. Finley*, at 94. Testimony of John Green, *Barnes v. Adams*, at 66-67.

The more typical deaf man communicated with hearing people via improvised signs, but not formal sign language. Essentially, these men were able to vote if they had hearing men able to vouch for their mental bona fides and their work ability. This, then, privileged those men able to communicate with hearing men and disadvantaged those trained in manualist methods. In the case of *Samuel Lee v. John S. Richardson*, in South Carolina, an unnamed colored man was refused at the polls, because the election managers said that he was too deaf to hear the oath, and possibly idiotic.³³

George Robb, who also lived in the town infirmary with Robert Morris, had been deaf since birth. He did not know sign language, but according to the superintendent Zebulon Dickinson, “he can make his wants known by signs and motions, and express to your understanding through signs and gestures his pleasure or displeasure.” The superintendent characterized Robb’s mental condition as “bright and clear...with as much intelligence as other men generally, and more than a good many.” At the infirmary, “he harnesses the team, hooks it to the wagon, plow, shed or anything else that he is directed to do with the team; has had, up to within the last few months, the entire care of the team, and been its regular driver. He breaks up land, plows corn, goes to mill, blacksmith shop, drives the team alone, and is a careful, trusty driver.” William Price testified that his son John Wesley did not talk and “goes altogether by motions.”

³³ *Samuel Lee v. John S. Richardson*, H. R. Ms. Doc. 19 (1881), at 231.

He was able to count with his fingers, but “has no learning.”³⁴ William Price concluded that his son “otherwise” was “very sensible and smart.”³⁵

In the hearing of *Taylor v. Reading*, an 1869 hearing out of Pennsylvania, Emmanuel LaRue was noted as a deaf mute. LaRue lived in Middletown township for over twenty years. Phineas Stradling, an acquaintance of LaRue, testified that LaRue paid his own taxes, “is an intelligent man,” conducts his own business, and had voted in Middletown township for twenty-seven years. LaRue “makes himself understood by signs. He made signs that he was going to vote for Mr. Taylor.” Stradling testified that LaRue “knows [who] he was going to vote for generally.” Since he was “acquainted with LaRue’s signs,” Stradling “told the board that I thought he knew whom he was voted for.” LaRue had held “up his hand to his ear” to show that Taylor was tall. Generally, Stradling said that “persons who have been acquainted with him a long time are the only ones who can converse with him.” Stadling added that LaRue “had learned all trades most. He is a good mason, shoemaker, broom-maker, basket-maker, cigar-maker. Does his own patching.” LaRue was unable to read, although he knew some arithmetic. Stadling said that if “he does a day’s work he can tell quickly how much is due him, and who he is worked for.” Stradling said that “[h]e understands figures, but not letters.” LaRue was not educated, though Stradling said that “[h]e would have taken learning if he had a chance.” Edmund Harrison, another acquaintance of LaRue,

³⁴ Ibid.

³⁵ Testimony of Zebulon Dickinson, *Campbell v. Morey*, at 275. Testimony of William Price, *Andrew G. Curtin v. Seth H. Yocum*, H.R. Ms. Doc. 14 (1879), pt. 3, 3647.

characterized him as “an intelligent man – an ingenious man.” When asked how LaRue “is an intelligent man, when he can neither talk, hear, nor read,” Harrison responded that “I mean to say he is a man of good judgment and understanding for a man in his situation.”³⁶

LaRue was knowledgeable of the township elections, although Stradling did not know when questioned if LaRue knew “the object and effect of electing representatives to Congress or the legislature.” Harrison was present when La Rue was challenged at the election. He suggested that the election officers offer to swear in an interpreter. However, Harrison said that the “party challenging refused to ask the interpreter any questions.” Jacob Hibbs challenged him and asked that LaRue be sworn. Jacob Hibbs said he challenged LaRue because “he was not qualified.” He speculated “I think he is a mute from his birth. He could neither hear nor speak. I think he cannot read; there are some things he can make persons acquainted with him understand, but very few.” Hibbs “had nothing specific” on why he challenged LaRue, and asserted “I believe that the law gave me the right to challenge, and it was the duty of the officers to qualify him.” He believed that it was impossible for LaRue to be qualified because he could not take the oath. He also wanted to know where LaRue was born. The Republican inspector said that he was satisfied that LaRue was a legal voter. James G. Hibbs, the Democratic inspector, repeated the oath to LaRue, “but there was no response.” Finally,

³⁶ Testimony of Phineas Stradling, C.N. Taylor v. John R. Reading, H.R. Ms. Doc. 7 (1869), at 174. Testimony of Edmund Harrison, Taylor v. Reading, at 188-89.

LaRue's brother was called to the polls and sworn in as an interpreter. The election officer asked the brother if he was acquainted with LaRue's signs and the brother answered affirmatively. The challengers did not ask the brother any questions. Ultimately, LaRue's vote was received, although he was challenged and he was not sworn.³⁷

Blindness

Blind men were also challenged. Unlike the deaf men, though, these men were uniformly old and living in charitable institutions. Their blindness, then, may have been part of an accumulation of characteristics that threw suspicion on whether they were sufficiently independent and mentally fit for voting.

Dennis Morris's mental and physical condition was reported as "median, for a man of his age." He was 75 years old at the time of the election. His sight and hearing were both poor. Zebulon Dickinson, the infirmary superintendent, described Morris's mental power as "ordinary for a man of his age. He had been a distiller in his time, before he came there. He done most of the splitting of stove-wood, gathered scouring rushes along the creek, picked blackberries in blackberry season, gathered pawpaws and hickory-nuts." He added that Morris was "capable of washing and dressing himself." He was illiterate. When asked about the mental capacity of Morris to

³⁷ Testimony of Edmund Harrison, *Taylor v. Reading*, at 188-89. Testimony of Edmund Harrison, *Taylor v. Reading*, at 188-89. Testimony of Jacob Hibbs, *Taylor v. Reading*, at 190.

“comprehend or converse on the political issues between the parties or the fitness of the different candidates for their respective offices” the question was objected to that “the ability of the elector to converse on and comprehend the respective merits of candidates is not an element of qualification for a voter.” In any respect, Dickinson was unable to answer, “[n]ever having conversed with him on these subjects.” Another objection was raised when Dickinson was asked “is it not a fact that for the last year and for some time previous that Dennis Morris has not had any more sense than a child, and has he not been treated in the way of government as a child, and do you have to watch after him and care for him as you would a child?” Counsel objected: “even though enfeebled by old age, it is not a disqualification of the elector.” Dickinson replied: “The degree of sense of the child is not defined, and in answer to this I would say that in my opinion and believe he has more sense and judgment than some children and perhaps not as much as some others. In one sense of the word, he has been treated in the way of government as a child, being under my care and supervision. I look after and supply his wants. The watching after and caring for as a child he don’t require. He is not childlike in his habits. Morris’s habit of walking along the road was questioned, and the superintendent said that when Morris was asked, the road was the “plainest, smoothest, and easiest place for him to walk for his little pleasure.”³⁸

Dr. J.C. Kennedy was asked about Dennis Morris’s testimony and whether “does not blindness and old age very frequently produce the condition and characteristics

³⁸ Testimony of Zebulon Dickinson, *Campbell v. Morey*, at 275.

manifested by Dennis Morris while on the witness stand when you saw him.” The doctor replied: “Blindness might produce the characteristic of some of the manifestations, senility might produce a state of dementia that would account for all of it.” He believed that Dennis Morris’s answers indicated “a considerable degree of intelligence.”³⁹

The physical and mental condition of Squire Douham, Lewis Byers, James Wilson, and Michael Bigler were all called into question. 82-year-old Squire Douham’s physical condition was described as “not very good” and he was “quite a feeble old man.” His mental condition, though, was characterized as “pretty good for an old man.” Lewis Byer’s physical condition was physically “not very good. He is a small man and blind.” His mental condition was “above the ordinary....He was a practical carpenter and joiner until he lost his eyesight. He has been blind since 1867. He is a man who seeks information, and has the newspapers read to him.” James Wilson, was, “physically...not good. He was an old man in his dotage, 83 years of age, now blind, and has been for a number of years.” By contrast, “his mental condition is as good as most men of his age. He discusses religious questions with considerable degree of intelligence.” Michael Bigler’s physical and mental condition was “only ordinary.”⁴⁰

Lewis Byers testified that he had been blind for 16 years, and it was “the cause of my going to the infirmary.” He was unable to read or write since before he was blind,

³⁹ Testimony of J.C. Kennedy, *Campbell v. Morey*, at 320.

⁴⁰ Testimony of Zebulon Dickinson, *Campbell v. Morey*, at 275.

and was unable to read Braille or raised letters. He asked Mr. Dickinson for a Democratic ticket. He said the inmates had a lot of discussions about politics, but he was unable to read newspapers. He characterized the election contest as “to find out if we are idiots or not; damn fools or something.” On cross-examination, he was quizzed on his knowledge of politics, including who were the president and governor.⁴¹

Thus, blindness, unlike deafness, was not the critical criteria for these men. Blindness was an indicator that signaled to challengers that a voter might be advancing in age – and senility. Consequently, while deaf men faced suspicion about their mental prowess throughout their lives, here, blindness acted as a symbol for possible challenge only for the aged.

How to determine?

Ultimately, it was up to the legislators to make the decision of which men were too idiotic or insane to be valid voters. Before that, though, witnesses offered their own assessments of their fellow voters, with the prompting of counsel for both sides.

Medical Expertise

While Benjamin Rush’s *Medical Inquiries and Observations of the Diseases of the Mind*, published in 1835, ran to 365 pages, Isaac Ray’s 1871 treatise concerning medical jurisprudence on insanity covered 658 pages solely on the legal aspects of mental

⁴¹ Testimony of Lewis Byers, *Campbell v. Morey*, at 307.

disease and debility. Ray's work was only one of many treatises and works penned by doctors specializing in the mind as they created increasingly nuanced classifications of mental disease.⁴²

None of these medical experts were present as expert witnesses during the hearings, though, nor did anyone refer to their treatises. When doctors testified in the congressional hearings, they were members of the communities of which the voters were a part. Most of them had not examined the voters, but instead offered their conclusions based on voter testimony, community rumor, or facts offered by counsel. Thus, they made after-the-fact assessments. Doctors, unlike the lay members of the community, emphasized the brain, rather than the mind, in their testimony. Furthermore, they were the only ones to bring up specific diseases such as dementia, monomania, heredity, and epilepsy. Despite this gloss of medical expertise, though, most of the medical testimony echoed the assumptions of laypeople's testimony, using factors such as appearance and reputation. Moreover, none of the doctors who testified were psychiatric experts.

Dr. Allen Ashburn used to be the doctor in the Clermont County infirmary. He had known Charles Beebe for 10 or 12 years, although he never examined him. Ashburn said that he "regarded him as not very strong intellectually, somewhat erratic in his action at times." Ashburn added that Beebe "came from a family of idiots who were unable to provide for him, and he gave promise at that time of becoming one himself.

⁴² Susanna Blumenthal, "The Deviance of the Will," 11 *Harvard Law Review* (2005), 964, 978-79.

His intellectual development was very slow." He considered Beebe an idiot. When asked if an idiot is "one in whom there is not sufficient development of intellect to fit them for social conditions in life, avoid danger, or provide for their natural wants," Ashburn replied that none of these elements applied fully to Beebe. Beebe was "probably not well fitted for social conditions of life. Knows the difference between right and wrong. Will work. Knows when he is hungry, and how to feed himself. Not very cleanly about his person; but hardly fit to make contracts to engage in any business of life that would require financial transactions." He believed that Beebe knew which ticket he was voting and "probably would know what he wanted to vote for if the matter had been explained to him." Ashburn thought that lunacy was defined as "a person of unsound mind, resulting from hereditary or acquired disease of the brain or other of the physical structures." He thought "it would take a book larger than this office" to hold all the degrees of lunacy, as "persons may be insane on a particular subject, and perfectly rational, and reason correctly on all others, providing it does not originate from organic disease of the brain." This included that a person could be insane on some subjects, but sane with respect to voting. Noah Potts was insane because of his epilepsy. His insanity was "more violent preceding and immediately after an epileptic fit" but he was insane at all times in the past few years. As for Thomas Risley, "he was imbecile as well as insane." For John Fleck, Ashburn had "never heard the man use a coherent sentence in my life."⁴³

⁴³ Testimony of Allen Ashburn, *Campbell v. Morey*, at 292.

Dr. G.W. Moore thought that Thomas Risley, Noah Potts, and John Fleck were all insane and Charles Beebe was an imbecile or idiot who came from a family of idiots. He defined an idiot as “any one with a weak or unsound mind.”⁴⁴

Dr. J.W. Greene was the family doctor for Aaron Casad and his guardian. He said that Casad was an imbecile. His facial expression was sufficiently foolish “so as to attract attention.” He believed that Casad’s problem was a congenital defect. He did not think that Casad was mentally capable of voting and was a person *non compos mentis*. He assessed idiocy or imbecility “by the manifestation of their brain power, conduct, appearance, and conversation.” He thought that medical men “from his study of the anatomy and physiology of the brain, would be more competent to determine any nice points in the manifestations to the action of brain cells, physiologically considered” would be more capable than a layperson to determine idiocy or imbecility. He believed that there could be external indicators of imbecility “while the head may be normal in size and configuration, yet brain power as manifested in thought and speech, expression of the countenance and eye, and volition, both voluntary and involuntary.” He did not think that laypeople were able to assess these factors.⁴⁵

Dr. E.I. Thorn said that with respect to David Norris, “he has the appearance that from first sight you would judge he has epilepsy, or idiotic symptoms; he has the idiotic appearance – a listless, dull eye.” While Dr. Thorn had never seen Norris have a fit

⁴⁴ Testimony of G.W. Moore, *Campbell v. Morey*, at 324.

⁴⁵ Testimony of J.W. Greene, *Campbell v. Morey*, at 542.

himself, “but from what his folks tell me, I have no doubt that he has epileptic fits.” Though Thorn said that Norris had an idiotic appearance, he thought “it is stating it pretty strong to say that he is idiotic.” “[A] state of moral imbecility would describe his condition” better. He defined idiocy as running “into complete minimalism” whereas an imbecile “may have indistinct mental faculties.” “The true idiot is nothing more than animal life. An imbecile is one having impaired mental faculties, but not to the extent of idiocy.” He compared Norris to having the mental capacity of a two-to-five-year old child. Thorn also knew John Killeen, who had lived in an asylum and “at least partially recovered” from his insanity. Thorn said, though, that Killeen “is not exactly right” and did not completely understand voting. He did not think that one required medical knowledge to determine idiocy or imbecility. While “a nonprofessional person would perhaps not arrive at an opinion so accurately as a professional man, yet their opinion would be of value.” He had not seen any medical books that defined grades of idiocy. He also thought that it was possible to determine mental status from appearances. He thought that a person “should possess the qualifications of at least the ordinary man, mentally speaking” in order to vote.⁴⁶

Dr. E.T. Behymer was the doctor at the infirmary for the past 13 or 14 years. He thought that Charles Beebe’s “mental faculties are weak.” He did think that Beebe had sufficient mental capacity to understand which political party he wanted to vote for. Both of Beebe’s sisters lived at the infirmary. Behymer thought their mental condition

⁴⁶ Testimony of E.I. Thorn, *Campbell v. Morey*, at 552.

was “weak.” He did not consider Beebee “capable of considering any political question to any great extent.”⁴⁷

Dr. J.B. Erwin said that Benjamin Rutter was “looked upon as a very silly old man.” He diagnosed Benjamin Rutter with insanity in the form of monomania. He did not know what caused monomania and said that “no medical terms” “explains it”; “monomania is generally produced by the mind dwelling on one subject till he becomes insane.” He also argued that “an idiot is really in a state of imbecility continually; an insane person may at times appear quite sane.”⁴⁸

Dr. B.F. Hopkins testified that Henry Stafford, a colored man, “has no mind at all, and is an idiot; he has no reasoning.” Stafford was a patient of his and had “always been an idiot.” He believed that Stafford was capable of doing very little work “and must have somebody to direct him then; and he is not able to do anything of any consequence.”⁴⁹

Epilepsy

People with epilepsy were a poor fit for assessing mental status during an election. Laypeople believed that some people with epilepsy were periodically insane during their epileptic episodes, but sane otherwise. According to Craig Filson, the

⁴⁷ Testimony of E.T. Behymer, *Campbell v. Morey*, at 911. Testimony of E.I. Thorn, *Campbell v. Morey*, at 552.

⁴⁸ Testimony of J.B. Erwin, *Delano v. Morgan*, at 536.

⁴⁹ Testimony of B.F. Hopkins, *Massey v. Wise*, at 380.

infirmity director, Mark Green was able to do errands if you “give him a note and tell him what store to go to and he will go and get the things all correct.” Filson refused to label Green as almost idiotic, as he “always heard him counted an epileptic.” He tempered his assessment by adding, “Of course I don’t know what a doctor would say. I am not a doctor. I never heard him called idiotic.” Green performed tasks at the infirmity such as feeding a blind no-handed fellow resident named Tom Darling, and did errands for the staff. Zebulon Dickinson, another infirmity superintendent, believed that John Fleck and Noah Potts were of ordinary mental condition when not suffering from an epileptic fit. As for John Fleck, “during his paroxysms he is a little off, sings and saves the world.” Noah Potts was “good” between his epileptic paroxysms.⁵⁰

Other epileptic people were considered mentally deficient at all times. James Stewart also described David Norris’s appearance: “He is very much bent and stooped in his body and limbs. His expression is dull and meaningless.” He had heard that Norris was epileptic. To a stranger, Stewart said that Norris “would be taken as deficient in physical ability, and also in his mind.” William Hamilton also knew David Norris, and said that “his people say he has fits; I know that he is not trusted with anything around the place, even with a horse. He is a man that looks like he had the St. Anthony’s or St. Vitas’s dance.”⁵¹

⁵⁰ Testimony of Craig Filson, *Wallace v. McKinley, Jr.*, at 66. Testimony of Zebulon Dickinson, *Campbell v. Morey*, at 275.

⁵¹ Testimony of James Stewart, *Campbell v. Morey*, at 558. Testimony of William Hamilton, *Campbell v. Morey*, at 959.

Doctors argued that epilepsy was a progressive condition that eventually led to total insanity or idiocy. Dr. G.W. Moore was a doctor in the infirmary in 1871. He believed that with longstanding epilepsy, “they finally lose their minds entirely and become imbecile.” He thought that Thomas Risley, Noah Potts, and John Fleck were all insane. Dr. J.C. Kennedy said that Dennis Morris was “laboring under dementia” and “manifested but little capacity for consecutive thought or normal reasoning.” As a witness, Kennedy thought that Morris “acted like a man but of little mental capacity. He appeared to be restless, anxious, and wanted to leave.” He was not entirely sure as to what caused Morris’s dementia, as it might have “originated from epilepsy or senility.” He believed that Noah Potts’s testimony indicated “he was laboring under paralysis and senile dementia.” He defined dementia as “a deterioration and weakening of the mental faculties. The degrees vary from normal mental action to idiocy.” He believed that “epilepsy and heredity are probably the most frequent causes of insanity.” He thought that blindness might be the cause of many of Dennis Morris’ symptoms.⁵²

Definitions

While doctors defined insanity or idiocy according to brain condition, laypeople described the mental state of their fellow voters according to the condition of their minds. Some people had no trouble referring to others as lunatics or idiots. John Lyons agreed that Frank King was “what I would count as an idiot.” He said that King’s

⁵² Id.

mental condition was “very bad on the day of the election; I think he was idiotic on that day.” When asked to distinguish between idiocy, temporary mental aberration, insanity, and weak mind, Lyons replied: “I consider an idiot to be one of weak mind, incapable of taking care of himself. Temporary mental aberration consists in one being boisterous and having to be taken care of for the time being. An insane man is one who has no control over himself. A weak-minded person is one who can be led around by anybody.” He did not think that King had any mind at all of his own. Isaac Odell, an acquaintance of Benniah Keifer, saw him nearly every day. “As well as [he could] judge” from his “observation and acquaintance with him, he is idiotic, and incapable of attending to business or taking care of his estate, and has but very little, if any intelligence, and has a guardian to take care of his estate.” John Colescott said that Ayers Carson “does not act like an ordinary person; he at times is noisy, and at times he is still. He has the appearance of a person of not much wit. He is considered as an idiot by those who know him in that neighborhood.” In sum, Colescott “regard[ed] him as an idiot.” When asked to clarify that Carson was an idiot, “did you not mean to say that he was a man of very weak mind, not coming up to the average intellect,” Colescott repeated: “I consider him an idiot.” He defined idiot as “a man totally deprived of his right mind.”⁵³

⁵³ Testimony of John Lyons, *Cook v. Cutts*, at 274. Testimony of Isaac Odell, *Gooding v. Wilson*, at 188. Testimony of John Colescott, *Gooding v. Wilson*, at 271.

Strikingly, all of the black voters were flatly described as idiotic. This assessment fell into line with racial stereotypes of mental deficiency. It also may have been easier for white men to indict black acquaintances for mental inadequacy than white ones. Everyone, according to one witness in the William Lowe and Joseph Wheeler hearing, considered John Alexander, a black man, an idiot. James Green was an acquaintance of Ben Freeman, a colored man in Virginia. Freeman, according to Green, was an idiot when he knew him, although he did not see him the year that he voted. He defined an idiot as “somebody that had no sense.” While Freeman “might of had a little sense, but if a man would stand over him and tell him he might do something; but he could not measure a rail cut by himself.” He concluded Freeman was an idiot “the very first time” he saw him. A.G. Cleek, the clerk of the court, also said that Green was “what I call an idiot.” He had known Freeman for 35 or 40 years, and “have seen him hundreds of times, and have always considered him an idiot, and he has been generally so regarded by everybody.” Dr. B.F. Hopkins testified that Henry Stafford, a colored man, “has no mind at all, and is an idiot; he has no reasoning.” Stafford was a patient of his and had “always been an idiot.” He believed that Stafford was capable of doing very little work “and must have somebody to direct him then; and he is not able to do anything of any consequence.”⁵⁴

⁵⁴ Testimony of Herman Briggs, *William M. Lowe v. Joseph Wheeler*, H.R. Ms. Doc. 22 (1882), at 984. Testimony of James Green, *Massey v. Wise*, at 377. Testimony of A.G. Cleek, *Massey v. Wise*, at 401.

Testimony of B.F. Hopkins, *Massey v. Wise*, at 380.

Far more likely than a direct indictment of lunacy or idiocy though, especially for white men, was a less harsh assessment of the person in question. Rather than defining someone as possessing no mind, some witnesses described voters as having a “weak” or “low grade” mind. Josiah Benner had been acquainted of Samuel Thompson for 15 or 20 years. He “always was of the opinion” that Thompson’s mental condition “was of a very low grade.” Benner declared that Thompson “voted as a parrot talks, what others told him.” R.P. Bolles testified that family, friends, and neighbors regarded Patrick O’Connor “as a man of very weak intellect.” C.E. Fenton, an acquaintance, said that King was an idiot. He said that when John Hopkins asked King whom he voted for, King replied that he did not know. When asked to clarify the difference between an idiot, an insane man, and a weak-minded person, Fenton replied: “An idiot is a man whom I consider to have been of an unsound mind all his life; an insane man is a man who at one time may have had a sound mind, but whose mind has become unbalanced; a weak-minded person is one who has good ideas on some subjects, and very bad and weak ideas on others.” King was distinguished from other men with sound minds by his “reasoning faculties – the intellectual part of the mind,” which was “dormant,” in his case. Fenton added: “He is no reasoner, and cannot be, according to my opinion,” although “he seems to know something about right and wrong, for he seems to be perfectly inoffensive.” W.C. Snow, the circuit court clerk, testified that he has known Henry Warnka for about seven years. He said, “for about a year last past he seemed to be of unsound mind.” He drew this conclusion from Warnka’s “general conduct and

unintelligible conversations.” James Fry, the supervisor of elections and the clerk of the board of inspectors at the precinct, testified that he had known Henry Warnka for over six years, and had seen him nearly every day during that time. He added that: “I have conversed with him dozens of times; so much so that he became a nuisance to me; that I had to leave my store on several occasions; I have partially understood him at times; he has seemed very seldom to understand me.” He said that Warnka’s mental condition was “very peculiar” and he considered him of “unsound” mind. John McCoy was a partial acquaintance of Ayers Carson for the past ten or fifteen years. He said: “I have frequently met Ayers when I would be on his mother’s premises, and I would pass the time of day to him. I would say ‘Good morning,’ or ‘How do you do, Ayers?’ The reply he would give to me, he would say a kind of a grunt. I could understand from him, ‘Where are you going?’ and ‘What are you going to do?’ in a drone. He acts very curious; he acts like a man insane, or incompetent to do any kind of business whatever, to my knowledge.” He regarded Carson “as a man who has not a sound mind” and “in some respects I would consider him an idiot.” Andrew Bell testified that Jacob Fritz “was a man of not very great intellect; inoffensive and good natured — not much of a mind of his own.” B.F. Leslie, the sheriff, did not diagnose Benjamin Rutter as insane or sane, but said, “his actions, to me, denote that he is wrong in his mind somehow.”⁵⁵

⁵⁵ Testimony of Josiah Benner, *Wallace v. McKinley, Jr.*, at 170. Testimony of R.P. Bolles, *Cook v. Cutts*, at 59. Testimony of C.E. Fenton, *Cook v. Cutts*, at 272. Testimony of W.C. Snow, *Bisbee, Jr. v. Finley*, at 432. Testimony of James Fry, *Bisbee, Jr. v. Finley*, at 434. Testimony of John McCoy, *Gooding v. Wilson*, at 277. Testimony of Andrew J. Bell, *Van Wyck v. Greene*, at 8. Testimony of B.F. Leslie, *Delano v. Morgan*, at 544.

Witnesses often hesitated when pressed to label someone an idiot or lunatic. When asked if Rufus Pipes was an idiot or imbecile, George Beatty replied, "I say he is not as sprightly as some men, but I think I would not call him an idiot." When pressed that "is he not considered by all about half-fool, and has he sufficient capacity to vote intelligently," Beatty added: "I think he is considered to be about half-idiot; I do not know how to answer the latter part of the question." When asked directly if Nathaniel Martin and William Dickerson were idiots, Ira Condit, a commissioner, responded, "I don't know really whether I could say what constitutes an idiot." He continued: "They are neither of them calculated to take care of themselves." Philip Andrews did not answer directly on whether his son John was an imbecile, just stating "he is not capable of doing any business for himself at all." Henry Tudor believed that Benjamin Halsey was not a "man of very good judgment" and did not consider him of sane mind. He could not say whether Halsey was insane, however, starting "I don't know what it takes to constitute an insane man." Dr. Hiram Eggleston asked that his son be excused from road work because of his mental imbecility. He did not consider Henry insane, "not a bit," but thought he was "broke down and weak minded." Joseph Kniseley lived down the street from Aaron Casad. Kniseley hesitated to label Casad an idiot, as he didn't "know what you call idiotic," but he "consider him a person not competent to attend to his own business." He defined an idiot as a person "not competent to transact any

business for himself or anybody else.” An imbecile was “a man of simple talk and childish actions.”⁵⁶

As Joseph Kniseley’s remarks indicate, witnesses could assess voters on a gradient. Many witnesses settled on the descriptor “imbecile” rather than “idiot,” to describe the questioned voter. While idiots possessed no mind, imbeciles were capable of some level of reasoning. Thus, imbecile could be considered a less harsh indictment of an acquaintance, family member, or neighbor. Imbecility, though, was not included in the legal standards for disfranchisement. William Dennison, the deputy probate judge, said that in his judgment, Charles Beebe was an imbecile. James Flack would take William Hawkins, “after becoming acquainted with him, to be an imbecile” and did not think that Hawkins should vote. He defined an imbecile as “a person that is not as witty and smart as they ought to be.” Frank White declared that “Charles Beebe is an imbecile in a degree, both in mind and body.”⁵⁷

While “idiot” and “imbecile” had a clear relationship to each other, witnesses used “crazy,” “wild,” and “insane” interchangeably. When Page Irwin was asked where James Byers was, he said “crazy in the asylum.” He added “he has been crazy for

⁵⁶ Testimony of George Beatty, *McKee v. Young*, at 65. Testimony of Ira A. Condit, *Delano v. Morgan*, at 42.

Testimony of Philip Andrews, *Delano v. Morgan*, at 209. Testimony of Henry Tudor, *Delano v. Morgan*, at 507. Testimony of Hiram Eggleston, *Delano v. Morgan*, at 192. Testimony of Joseph Kniseley, *Campbell v. Morey*, at 550.

⁵⁷ Testimony of James Hawkins, *Campbell v. Morey*, at 475. Testimony of Frank White, *Campbell v. Morey*, at 915.

years. Don't know how long in the asylum." A.F.H. Dukes testified that he did not know why Philips was insane and in the lunatic asylum, but noted "there is a colored man [Daniel Thomas] that lives on the same place with him says that it was his treatment after the election caused him to go crazy." David Beecher lived in the poorhouse and was characterized as "very crazy." David Shaner, who also lived in the Adams County poorhouse, testified that "David Beecher is at this time insane; they keep him confined." John D. Hawkins had known John Killeen since he was a boy. He has "known the boy to be crazy for the past six or eight years." He did not think that Killeen "had sufficient will-power" to vote, and was crazy and not of sound mind. While he was not a certified expert on insanity, he "could tell a crazy man when I see him, though." Charles Hamilton had known John Killeen for fifteen years. He described Killeen as "crazy" since he had been released from the asylum: "his conversation is very foolish; he slobbers at the mouth when he talks; he talks fast, flies about from one thing to another; he is flighty; a stranger would see at once that he wasn't right; he will keep on talking to you whether you answer him or not."⁵⁸

Rumor

⁵⁸ Testimony of Page Irwin, *Cook v. Cutts*, at 564. Testimony of A.F.H. Dukes, *E.W.M. Mackey v. M.P. O'Connor*, H.R. Ms. Doc. 15 (1880), at 540. *Coffroth v. Koontz*, at 96. Testimony of David Shaner, *Coffroth v. Koontz*, at 97.

Testimony of John D. Hawkins, *Campbell v. Morey*, at 561. Testimony of Charles Hamilton, *Campbell v. Morey*, at 573.

Although John Boose never actually *saw* Henry Shute bite a horse, he “was *told* that he did do it.” Boose, a saloon-keeper, testified Shute to be “half crazy.” He rarely spoke to Shute himself, “because he is a funny fellow.” Shute’s reputation as “a man of unsound mind” and “very much excited,” preceded him, as it did many of the men alleged to be lunatics or idiots in the congressional hearings. Neighbors, employers, and acquaintances testified not only to what they knew, but also the community understanding and reputation of particular notorious voters. While witnesses often hesitated to indict challenged voters, they were much freer using the words of their friends or neighbors to offer pejorative opinions.⁵⁹

R.P. Bolles testified that family, friends, and neighbors regarded Patrick O’Connor “as a man of very weak intellect.” Thomas O’Bryan said that “generally,” G.W. Prather was “considered in the neighborhood as an idiot.” John Lyons said that Frank King was regarded in the neighborhood as an inoffensive, harmless man who was “weak in his mind.” He added that the neighborhood generally considered King an idiot and they saw that a family member was always with him to take care of him and supervise him. Julius Potsdamer, an acquaintance of Frank Small, testified that Small was known in the community as a “big liar.” Potsdamer added: “I believe the greater number of the people consider him an idiot, and not responsible for what he says.” L.J.

⁵⁹ Testimony of John Boose, *Campbell v. Morey*, at 787. Added emphasis

Lemert, an election trustee claimed that James Laycock was “counted as being insane by the neighbors.” Presley Hall concurred that James Laycock was considered insane.⁶⁰

Some men had neighborhood nicknames or were the subject of teasing. Joseph Kniseley lived down the street from Aaron Casad. Kniseley testified that Casad was always called “silly” by his parents, that people used to plague him, and “it would be said that they ought not to plague a silly boy, and from that on up to manhood it has been the same.” J.W. Hamilton had known John Killeen all his life. He added, “everybody that knows him knows that he is insane. He comes along where I am working, and his father will come along and say, ‘I don’t know what to do with John; I am afraid I will have to send him back again.’ He is not vicious; just wild and foolish.” He said, “the boys plague him because he is insane and he gets angry. The boys call him ‘Crazy Killeen,’ and it makes him mad. I have often had to drive boys away from him. He is generally known as insane; he is not of the moody, moping kind of insanity, but more of a wild, looney kind. He is considered, and his people consider him. In some extent, unsafe, and talk about having him sent back to the lunatic asylum.” Andrew Cowan testified that customers referred to Samuel Thompson as “an old fool.” People would ask him to perform work and then “perhaps pay him a little something” afterwards. He worked for room and board when he was a hotel porter. He thought

⁶⁰ Testimony of R.P. Bolles, *Cook v. Cutts*, at 59. Testimony of Thomas O’Bryan, *Cook v. Cutts*, at 130. Testimony of John Lyon, *Cook v. Cutts*, at 274. Testimony of Julius Potsdamer, *Bisbee, Jr. v. Finley*, at 196. Testimony of L.J. Lemert, *Delano v. Morgan*, at 538. Testimony of Presley Hall, *Delano v. Morgan*, at 539.

that “the majority of the people, or in fact all of them, considered him a simpleton. I heard Mr. Nicholas say up in Wallace’s office that he thought he was weak-minded.”⁶¹

Appearance

Appearance played a big part in assessing someone’s mental status. On the day of the election, Thomas O’Bryan said that Prather “looked like a fool or idiot, from his vacant and unmeaning state, with his mouth compressed, and would stand in one position until moved by his father, staring at one object vacantly, and he did not even give his own name, but it was given by his father; and from these facts and others I consider him an insane person; and from his appearance I think he did not comprehend what was going on about him.” David Harner had known William Hawkins for 16 years; he lived half a mile away. Harner testified that Hawkins had a “right wild kind of look, especially when he is angry – a kind of a savage look.” He also said that “he has a slow kind of talk; he eats his words off pretty short.” James Flack had known William Hawkins for the past seven years. He did not think that Hawkins had a “very intellectual look about him. He is sharp-featured and stoop-shouldered, has a rather peculiar, slow walk. I don’t know but a person could tell that he was not exceedingly smart by seeing him and seeing him walk, and I am satisfied that any person would know that he was not very smart after talking with him.” Hawkins “lets his hands hang

⁶¹ Testimony of Joseph Kniseley, *Campbell v. Morey*, at 550. Testimony of J.W. Hamilton, *Campbell v. Morey*, at 564. Testimony of Andrew Cowan, *Wallace v. McKinley, Jr.*, at 444.

away from his body. I don't know but he swings them a good deal when he is walking." He is "rather peculiar and drills. He draws his words out long and speaks uncommonly loud for common talking ordinarily...He is rather peculiar in all his way. He has the habit of asking rather silly questions." Harvey Steele was a neighbor of William Hawkins who spoke to him on occasion. He said that Hawkins walked "kind of bent, and when he talks he kind of drawls things out a little. He is easily excited over anything he sees that he can't understand." He thought that Hawkins was in the habit of asking foolish and silly questions and he clearly looked like a person not of sound mind. Samuel Andrews was also a neighbor of William Hawkins. Hawkins had a "rather a glaring kind of wild look out of his eyes when he talking to you." William Barr was a good acquaintance of Aaron Casad. He said that Casad's "expression of his eyes is not that of a man of good sense." His appearance, conversational style, and dress indicated to him that Casad was defective mentally. He used his "eyes and ears" to classify Casad. J.H. Dickey was an acquaintance of David Norris. He described Norris as "drawn over and stooped; he doesn't have the appearance of a man in his right mind; he doesn't look like he had intelligence for common, ordinary business." And he felt that it was possible to determine a person's mental condition without talking to him, "from his general appearance; from seeing him and hearing his neighbors and folks talk about him."⁶² Dickey judged Norris not qualified to exercise the ballot based on his appearance, "his condition, and what his neighbors say about him." John Jacoby was

⁶² Testimony of Andrew Cowan, *Wallace v. McKinley, Jr.*, at 444.

also an acquaintance of David Norris. He said: “there is a very little expression about the young man’s eyes, and in his general appearance. I have come to the conclusion that he is almost a total wreck, both in mind and body.” James Stewart also described Norris’s appearance: “He is very much bent and stooped in his body and limbs. His expression is dull and meaningless.” He had heard that Norris suffered from epilepsy. To a stranger, Stewart said that Norris “would be taken as deficient in physical ability, and also in his mind.” J.W. Hamilton had known John Killeen all his life. He said that Killeen “acts curious and flighty; he looks so, and is so.” These witnesses did not find it difficult to determine mental status based on appearance, nor did they believe making an assessment required special training. Rather, their descriptions suggested that idiocy or insanity was readily discernible and obvious by facial expression, speech, and gait.⁶³

Standards

While witness decisions on voting were often conclusory – they usually offered just a yes or no – through questioning, witnesses testified as to how voting fit within other types of legal standards of competence. These determinations fell within several categories: whether the voters worked and what type of work were they capable of

⁶³ Testimony of Thomas O’Bryan, *Cook v. Cutts*, at 130. Testimony of David Harner, *Campbell v. Morey*, at 472. Testimony of James Flack, *Campbell v. Morey*, at 475. Testimony of Harvey Steele, *Campbell v. Morey*, at 478. Testimony of Samuel Andrews, *Campbell v. Morey*, at 481. Testimony of William Barr, *Campbell v. Morey*, at 546.

Testimony of J.H. Dickey, *Campbell v. Morey*, at 555. Testimony of John Jacoby, *Campbell v. Morey*, at 557. Testimony of James Stewart, *Campbell v. Morey*, at 558. Testimony of J.W. Hamilton, *Campbell v. Morey*, at 564.

performing; whether they would be willing to honor the voter's contract; whether the voter would be capable of conveying property; and whether their will would be valid upon their death.

Though counsel approached these different legal standards as if they were stable definitions of mental status, this was far from the case. Doctors battled with jurists over the typology of legal categories of mental conditions and tests for determining their presence. As Susanna Blumenthal has argued, "how...courts were to distinguish mental disease from other 'deviation[s] from mental perfection'" was far from an easy task, because doctors were unable to determine the somatic causes of disease.⁶⁴ Instead, doctors pointed to behavioral changes as evidence of mental disorder while at the same time attesting to their own expertise in making these determinations. Jurists initially embraced the expansion of explanations of mental disorder, the inclusion of doctors as expert witnesses at trial, and medical jurisprudence. By the time of the congressional hearings, though, jurists' enthusiasm was receding amid skepticism about the myriad and often contrasting claims from expert witnesses and different schools of psychiatric thought. Importantly, though, these debates were not part of the congressional hearings. Ordinary people were asked for their interpretation of the legal standards and whether their fellow voters met them. Thus, rather than a robust and universal legal standard, the ones offered up by the witnesses were necessarily local and idiosyncratic.

⁶⁴ Blumenthal, *Deviance of the Will*, 981.

For example, Craig Filson did not believe that Samuel Thompson “had any right to vote” since he did not think that Thompson “would know anything about who he was voting for unless he was told.” Filson believed that Thompson’s mental capacity did not “allow him to transact any business of any kind” or make a valid contract. At the same time, though, he added: “I never took any stock in pauper votes. I think whenever a man becomes a county charge he ought not to ask the right to vote, whatever party he belongs to.” William Davidson, the infirmary superintendent, also believed that Thompson was “not capable of taking care of himself and providing for himself.” He did not think that Thompson had “sufficient mental capacity and intelligence to exercise the right to vote.”⁶⁵

Joseph Harrison contended that his brother Stewart was able to make contracts and spend his own money; therefore, Stewart was not an idiot. By contrast, Robert Nichol testified that his brother John “has never made any contracts to amount to anything,” although he took care of his own money. William Nichol, John’s other brother, concurred that John had “never known his brother to make a contract.” He did think, however, that John was capable of conveying property, as he would not want to make less than his neighbors in the sale of land. Finally, he thought that John would be capable of making a will, as John was “just as sensible as you and me.” Joseph Harrison

⁶⁵ Testimony of Craig Filson, *Wallace v. McKinley, Jr.*, at 66. Testimony of William Davidson, *Wallace v. McKinley, Jr.*, at 168.

said that his brother Stewart was capable of performing daily farm labor for the farmers in his neighborhood.⁶⁶

Work

The most discussed analogue to voting competence was work. Only one man, Michael Higgins, worked for steady wages and only two men, Frank Sharp and Samuel Thompson, had a robust employment history. The other men performed household or farm chores, often under someone else's direction. It was likely difficult for the legislators to draw firm conclusions on mental competence from the testimony on employment, however, as many residents of small towns performed menial labor, and yet this did not necessarily mean they were insane or idiotic. Legislators could however assess the degree of independent responsibility given to the men as evidence of whether they were trusted to perform competently on their own.

Michael Higgins reported that "some fellow gave him his ticket" and he did not know who he voted for. Michael had worked for the past two winters as a watchman over the railroad track, and over the summer as a common laborer. He lived with his brother Patrick and paid for his room and his board out of his work wages. John Quailey, the section foreman on the railroad, had known Michael Higgins for several years. During the summer he repaired track and in the winter he was a daily watchman

⁶⁶ Testimony of Joseph Harrison, *O'Ferrall v. Paul*, at 554. Testimony of Robert Nichol, *Campbell v. Morey*, at 158. Testimony of William Nichol, *Campbell v. Morey*, at 161. Testimony of Joseph Harrison, *O'Ferrall v. Paul*, at 554.

and walked track. Quailey said he chose Higgins as the watchman because he “had more confidence in him” and he “always found him honest and right in everything he done, and could depend on him.” Quailey “didn’t see any difference in his mind from any other man” and he “saw nothing out of the way more than any other man.”

Higgins took sick in 1876 or 1877. Quailey thought that Higgins’s mind was the same before and after he was sick. Higgins was discharged from the asylum as incurably insane. When asked “and this lunatic, with a guardian, is the smartest man in your gang, and the most reliable, so that you select him for the responsible position of day watchman?” Quailey replied: “Yes sir; he is as honest a man as there is in the gang.” He added, “A good talker wouldn’t want to be in a place like that. It takes a man with judgment to fill that position.” While he did not believe that Higgins had “the best judgment in some things,” he understood his job. Asked to clarify how Higgins did not have the best judgment, Quailey said, “He is a man that goes right straight ahead and attends to what is hired for and pays no attention to anything outside of that. So far as that there is many a man that has better judgment in other things, but would let other things attract their attention from their work, but Michael Higgins is a man that will go right straight ahead and attend to his work and you can place confidence in him.”

Quailey added, “I don’t understand what you mean by smartness, whether it is quickness or understanding.” In terms of understanding, Quailey did not think that he had the best understanding of any man on the job, “but so far as his work is concerned

he does it and does it right, like any other man." He thought that Quailey had intellect equal to himself or any other man on the railroad.⁶⁷

James Adams used to work with Frank Sharp and saw him every day. He said that Sharp worked as a stock clerk. He "heard some of the boys in the store say, 'Well, Frank, we are going to put you out of here, because you voted the Democratic ticket'; and then again I would think he voted the Republican ticket, because I have heard he had always been a Republican before that."⁶⁸

Frank Sharp used to work in M.O. Adams's store. He said that Sharp "was not insane, to the best of my judgment and belief; he gave no showing of insanity that I saw; he occasionally showed indications of having taken a drink, but never showed any signs of insanity." Adams believed that Sharp "was just as competent to cast an intelligent vote that day as myself or any other man that voted." He had heard initially that Sharp "acted curious sometimes, and...kept him under close watch. My first intimation as to his unsoundness of mind or peculiar actions was when I arrived at Aberdeen, and was informed by some of his friends that they feared he was having softening of the brain, or was becoming insane. I talked with him, reasoned with him, and tried to persuade him that it was his duty to suffer himself to be taken to a sanitarium or insane asylum for treatment. He argued his side of the question with so

⁶⁷ Testimony of Patrick Higgins, *Wallace v. McKinley, Jr.*, at 176. Testimony of John Quailey, *Wallace v. McKinley, Jr.*, at 451.

⁶⁸ Testimony of James Adams, *Campbell v. Morey*, at 616.

much reason and gave such good evidence of sanity, that I would not, for my right arm, have been qualified that he was insane.”⁶⁹

Samuel Thompson was registered as idiotic. He had lived in the infirmary since 1882, when he was 60 years old. Before that, he worked as a hotel porter until the hotel was sold. While Thompson was at the hotel, he “did chores about the hotel, conveyed baggage to and from the depot, spaded the garden, sawed wood, and did light work about town.” In 1882, Thompson became sick, and according to Craig Filson “became so filthy that some of the people about town became tired of him and complained of him.” Thompson lived part of the time at the railroad station and “wherever he could bunk.” Filson said that Thompson was “silly and foolish; he can’t talk on any subject. You could get him to do almost anything you would tell him to. Give him a little something to do and tell him he is to run that, and he would hardly trade his position for the President’s.” When Thompson lived outside of the infirmary, people would ask him to perform work and then “perhaps pay him a little something” afterwards. He worked for room and board when he was a hotel porter. Filson thought that “the majority of the people, or in fact all of them, considered him a simpleton. I heard Mr. Nicholas say up in Wallace’s office that he thought he was weak-minded.” He never had a guardian,

⁶⁹ Testimony of M.O. Adams, *Campbell v. Morey*, at 617.

though, and supported himself until his illness. Filson said “he always went as ragged and dirty as he could” and begged tobacco and liquor.⁷⁰

Andrew Cowan, the hotel proprietor, testified that Thompson made fires and did assorted chores at the hotel. After he left the hotel, he “made his home down at the railroad station, had his bed there, and staid [sic] there of nights.” He carried dispatches to various people. While Thompson was at the hotel, Cowan said “part of the time his health was good, and part of the time he had sick spells.” The first year of his employment, Cowan paid him wages. He worked in the barn and took care of the stable. He changed jobs when the man who he was replacing came back from the army. After that, Cowan said, Thompson “made his home with me, and worked for other people more than me by carrying baggage, etc. and I paid him no wages.” Eventually, Cowan fired Thompson. He declared: “The man was getting old, and he was no relative of mine. I didn’t care about having him around any longer.” Also, customers complained that Thompson was a nuisance. Cowan did not hear any of the customers call Thompson an idiot, although he was often called “an old fool.” Cowan refused to swear that Thompson was a “fool, and a disagreeable fool at that, and though with kind and good intentions.” He characterized him as an “exceedingly accommodating and obliging servant.” He added that “in going to the train, he would handle as many satchels and trunks as any other man, and keep each one in its place; could tell every

⁷⁰ Testimony of Josiah Benner, *Wallace v. McKinley, Jr.*, at 170. Testimony of Craig Filson, *Wallace v. McKinley, Jr.*, at 165.

man's. He had good judgment in taking care of cattle. I had never had a man that was better in taking care of cows" and "feeding hogs." On the other hand, he was also "the butt and laughing-stock" of many of the people who came to the hotel. While on Sunday he was clean, he was not always during the week.⁷¹

More common were the accounts like Frank King's, where voters performed odd jobs for their family members. Frank lived with his father, Solomon King. He occasionally ploughed and chopped wood. As far as C.E. Fenton knew, Frank did not travel throughout the neighborhood or perform errands by himself.⁷²

John McCoy was a partial acquaintance of Ayers Carson for the past ten or fifteen years. He said: "I have frequently met Ayers when I would be on his mother's premises, and I would pass the time of day to him. I would say 'Good morning,' or 'How do you do, Ayers?' The reply he would give to me, he would say a kind of a grunt. I could understand from him, 'Where are you going?' and 'What are you going to do?' in a drone. He acts very curious; he acts like a man insane, or incompetent to do any kind of business whatever, to my knowledge. I know that his mother does not trust him to do any kind of business; when she sends him to the store on an errand, she always sends a note with him."⁷³ McCoy has seen Carson do garden chores and "trying to chop." He did not think "he can't do any kind of work in an intelligent way when left by himself, unless he is under the eye of his mother." He did not believe that Carson could count or

⁷¹ Testimony of Andrew Cowan, *Wallace v. McKinley, Jr.*, at 444.

⁷² Testimony of C.E. Fenton, *Cook v. Cutts*, at 272.

⁷³ Testimony of John McCoy, *Gooding v. Wilson*, at 277.

carry on a connected conversation on the most ordinary subject. He added: "Last fall, I think in the month of September, I was sowing some wheat on his mother's place; she came to me and requested that I should take my team and cut and haul some corn out of the field. His mother had sent him into the field to cut corn; she had told him to cut the first five or six rows along the fence; in cutting this corn, in place of going according to his mother's directions, he had got off of the six rows and had cut on the twelfth row. He had cut the twelve rows clean, except two pieces of rows, a few hills; he had cut farther than the twelve rows; he had cut a little notch in two other rows. She told me that she could not trust him." He regarded Carson "as a man who has not a sound mind" and "in some respects I would consider him an idiot." He did not think that Carson could read or write, and graded him as a "very inferior chopper."⁷⁴

Self-testimony

Finally, in perhaps the most definitive evidence, men testified for themselves. They were pressed under questioning to perform arithmetic, answer questions about geography and politics, and convey their understanding of the election. Strikingly, they were not asked questions of literacy, perhaps because illiteracy would prove too blunt an instrument to determine idiocy or insanity.⁷⁵

⁷⁴ Testimony of John McCoy, *Gooding v. Wilson*, at 277.

⁷⁵ Bensel, *The American Ballot Box*, 10.

Some men were not given the opportunity to offer their accounts. Henry Warnka was produced as a witness; however, it was reported by mayor Calvin Gillis that, “he appearing *non compos mentis*, not being in a mental condition to understand the nature of an oath or to testify intelligently, I take it upon myself to discharge him without any examination.” As of a year ago, he has “not been able to understand anything he said” although he could speak intelligibly before that year. W.C. Snow, the circuit court clerk said when Warnka appeared in Calvin Gillis’s office to give testimony, “nothing intelligible could be gotten from him,” so the mayor discharged him. John Fleck was not permitted to testify because he was locked up in the infirmary for having fits.⁷⁶

Silas Dibble’s testimony, reprinted in full, illustrates questioning based on arithmetic, spelling and politics. Congress ultimately judged him as idiotic.⁷⁷

- How much are seven and nine?
- Three
- Seven and four?
- Five
- Nineteen and six?
- Six
- How much do one and eleven make?
- Four
- If you take one from three how much remains?
- Two
- Add three to seven?
- Five
- What is your name?
- My name is Silas Dibble

⁷⁶ Bisbee, Jr. v. Finley, at 431. Testimony of W.C. Snow, Bisbee, Jr. v. Finley, at 432.

⁷⁷ Testimony of Silas Dibble, Delano v. Morgan, at 22.

- Spell Dibble
- I aint much of a speller
- Try; give us a trial
- [No answer]
- With what letter does your name begin, S or T?
- Are there one or two r's in your name, Dibble?
- Two
- Who did you vote for for President at the October election, 1866?
- Who did you vote for for governor at the October election, 1866?
- Delano
- Who did you vote for for sheriff at the October election, 1866?
- For Delano
- Who did you vote for for justice of the space?
- I did not vote for justice of the peace
- Who is the governor of the State of Ohio?
- Mr. Delano
- Who did you vote for for Congress at the October election, 1866?
- Delano
- Who is the mayor of the city of New York?
- I don't know, sir
- In what state does Mr. Delano live?
- I don't know, sir
- [Cross-examination]
- Have you ever seen Mr. Delano?
- No, sir
- Why did you not vote for General Morgan for Congress?
- I did not want to; did not feel like it; did not like him a bit
- Which do you like the best, Mr. Delano or General Morgan?
- Mr. Delano

Riley Garlinghouse was also subject to inquiry. His testimony, though, is more extensive than Dibble's and ranges through personal questions, politics, election mechanics, and geography. In both cases, it is difficult to draw a conclusion solely from

their testimony. Congress concluded that the information for Garlinghouse was insufficient to classify him as idiotic:

- Name, place of residence, and age
- My name is Riley Garlinghouse, and Licking county; my age is twenty seven years old the 19th day of last May
- How long have you lived in Licking county?
- Seven years
- Are you a native or foreigner?
- I was born in this country
- Did you vote at the election last fall, and for whom?
- Yes, sir; I voted for Delano
- Who else did you vote for at the same election?
- No one else
- Did not you vote for President last fall?
- No
- Did you vote for nobody but congressman last fall?
- No, sir
- Who gave you the ticket which you voted last fall?
- Mr. Gilbert
- Did it have more than one name on it?
- No, sir
- For what office was Delano running?
- I don't know as I can answer that question
- Was the name you voted written or printed?
- Printed
- Was any name scratched off of it?
- No, sir
- What other names were on it besides Delano?
- I don't know as I can answer that question
- What officers were elected last fall in this county?
- I don't know who it was
- Who was the last President of the United States?
- I don't know as I can tell
- Who did you ever vote for for President of the United States?
- I can't tell
- Who is now President of the United States?
- I don't know
- Who is governor of Ohio?

- I don't know who it is
- Did you ever vote before last fall?
- Yes, sir
- Who did you ever vote for before?
- I don't know who
- How many does nine and five make?
- Fourteen
- Who got you to vote last fall?
- No one
- Who run against Delano last fall for Congress?
- I don't know
- What year were you born in?
- Three hundred and thirty-nine
- Are you married or single?
- Single
- Who do you live with?
- Live with Mr. Gilbert's folks
- How long have you lived with them?
- Three years, I believe
- Who did you live with before you lived with them?
- I lived with my father
- Is your father living now?
- Yes, sir
- Where does he live?
- In Wayne County
- What part of the county?
- Eastern part
- What township?
- St. Albans
- Is St. Albans in the eastern part of the county?
- Yes, sir; I believe so
- What direction is it from Newark?
- West from here
- Were you ever subject to fits?
- Yes, sir
- You say you have voted before; for what office did you ever vote for any candidate?
- I don't know as I can tell now
- Do you recollect of ever voting for governor?
- No
- Do you ever recollect voting for a member of Congress?

- No, sir
- [Cross-examination]
- Where were you raised?
- Raised in Ohio
- Have you ever been a soldier?
- No, sir
- Have you seen any soldiers?
- Yes, sir
- What war were the soldiers in?
- I don't know as I can tell now
- Did you ever see any of the soldiers that were fighting the rebels?
- No, sir
- Is it right to steal?
- No, sir
- Is it right to swear?
- No, sir
- Did you ever go to school?
- Yes, sir
- Can you read?
- Yes, sir
- Have you any brothers?
- Yes, sir
- How many?
- Two
- Is your health pretty good now?
- Yes, tolerable
- Do you work on the farm?
- Yes, sir
- Can you plough pretty good?
- Yes, sir
- Can you sow wheat?
- No, sir
- Can you read writing?
- No, sir; not much
- Who did Morgan run against at the election last fall?
- I don't know

Conclusions

Congress made their determinations based on state evidence such as guardianship petitions, medical evidence from doctor testimony, and reputational

evidence drawn from neighbors, family members, and acquaintances of people whose mental status was under challenge. This evidence spilled over 20,000 pages of indictments and exhibits as Congress made fine distinctions that had significant consequences to the mental and voting statuses of an array of American citizens.

Despite the voluminous evidence incorporated in the hearings, the findings of the congressional committees were thin at best. Congressional determinations did not rest on any particular factor. Rather, all of the evidence was weighed as some men passed muster while others failed. James Stanley, for instance, had a guardian, yet he was found to be a competent voter, as he had attended school and performed small business tasks. Moreover, he had a history of voting. In another instance, Congress rejected the votes of seven of the 12 idiotic or insane persons who voted in the contest between Columbus Delano and George W. Morgan: Silas Dibble, Benjamin Rutter, William Dickerson, Nathaniel Martin, Calvin Hill, John Andrews, Henry Eggleston, and Peter Stoneburner. They considered the proof for Riley Garlinghouse, Jesse Whitehead, Henry Baker, and Hamilton Hopper insufficient. No rationale was offered for the distinction.

In the findings for the James Campbell and Henry Morey hearing, there are several different characterizations of people's mental status, including "imbecile," "hopeless idiots," "fair intellect," "small intelligence but not idiots," "very weak-minded," and "greatly enfeebled by age." Not all of these people were disenfranchised. Again, no reason is given for the differentiation.

The sociocultural model of disability hinges on analyzing the nexus between impairment and disability and revealing the social context embedded within this process of disablement. These congressional hearings demonstrate that though the consequences of disabling people may be significant, the evidence of impairment and the reasons for disablement were slim. The ambivalence of both congressional leaders and ordinary people show that they recognized the stigma of pronouncing another person disabled, and hesitated to do so.

CHAPTER 4: CITIZENS, VOTERS, IDIOTS?

On March 14th, 1905, 338 citizens of South Charleston, Ohio cast ballots to determine whether the town would ban the sale of liquor. 166 people voted no, 167 voted yes, 3 people did not mark their ballots, and 2 people marked their ballots incorrectly.¹ By one vote, South Charleston indicated that it would become a dry town and its celebrated taverns would close.

Not content to let the results stand, the tavern owners challenged the election in the Probate Court of Clark County. Ultimately, the court's decision turned on a single man, Leroy Pitzer, and his mental state. The Ohio Constitution barred people deemed "idiotic or insane" from voting. It was up to the Probate Court to decide if Pitzer met the legal standard of idiocy or insanity. If so, they would declare his vote invalid, and thus change the election result to a tie.

For most legal scholars, the story of *In re South Charleston Election Contest* and Leroy Pitzer would remain hidden in the past. The decision of an Ohio County Probate Court would likely escape the vision of a field concentrated on Supreme Court jurisprudence and federal appellate opinions, where legal scholarship is largely a story

¹ *In re South Charleston Election Contest*, 1905 Ohio Misc. LEXIS 191, 1 (Ohio Prob. Ct. 1905).

written from above, where powerful, Mandarin authorities enact legal rules. Decisions by lower courts complicate depictions of legal stories and de-center the primacy of federal appellate cases. *In re South Charleston* revises this model by yielding a polyvocal story, where formal legal documents receive their meaning from legal contestation, custom, and local practice. These factors not only provide the stakes for legal interpretation, they also shape the outcome. This approach heeds Sally Engle Merry's warning that "the texts of the law must be made socially real: enacted, implemented, imposed." These insights are particularly relevant for the study of voting rights for, as Alec Ewald has noted: "the idea of a 'right to vote' is incomplete if it does not understand suffrage as a *practice*....The administration of suffrage in the United States is not only federalized, but *hyper*-federalized, with an unusual amount of responsibility and even authority in the hands of county, city, and town employees." To understand voting in the United States, it is necessary to delve deep into cases like *In re South Charleston*, and not rely on Supreme Court jurisprudence or top-down decisionmaking.¹

¹ Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton, NJ: Princeton University Press, 2000), 218. Alec Ewald, "American Voting: The Local Character of Suffrage in the United States" (PhD Diss., University of Massachusetts, Amherst, 2005), 2. "Political scientists and legal scholars have long viewed suffrage as an essential component of citizenship. But emphasis has tended to fall on the formal possession of the right to vote, with its attendant symbolic message of inclusion, rather than on the practice of voting itself." *Ibid.*, 31. There is a "void in both American political historiography and general democratic theory" regarding the 'actual *practice* of elections." Richard Bense, "The American Ballot Box: Law, Identity, and the Polling Place in the Mid-Nineteenth Century," *17 Studies in American Political Development* 1 (Spring 2003), 5. Historians have "largely counted votes rather than paying attention to the complicated realities of casting them." David Grimstead, *American Mobbing, 1828-1861: Toward Civil War* (1998), 183.

In re South Charleston Election Contest and Leroy Pitzer's challenged ballot were far from an isolated curiosity in American history. Prohibitions against insane and idiotic voters led to an array of court challenges. Between the Civil War and the 19th Amendment, twenty states joined the sixteen earlier states that either entered the United States with or revised their constitutions to include provisions that prohibited idiots and insane persons from voting. These states' delegates did not feel the need to debate the question of whether to disenfranchise idiots or insane persons; every one of these provisions in all twenty states passed without discussion.

This is not to say voting rights were uncontroversial, however. Amid battles about voting duelers and those considered traitors to the country, delegates and legislators clashed over how to respond to citizens they perceived as "ignorant" voters who sullied the ballot box. The Progressive Era was a time of pessimism on the part of reformers who felt that the purity of the electoral process was under siege by lax election processes and by the disreputable people who voted. As a result, voting underwent an administrative revolution as secret balloting, increased registration, and more complex electoral rules acted as mechanisms to push people out of the franchise.

Election reformers aimed to tame an ad-hoc system of voting dominated by partisan interests and corruption. 1890 marked the first adoption of the Australian or modern secret ballot in the United States. The Australian ballot was praised for eliminating the ignorant and illiterate voters that reformers considered plagues upon the ballot box. At the same time, new physical assistance statutes permitted help for

those voters considered worthy of special attention: voters who were blind, deaf, otherwise physically disabled, or enfeebled by age. In the South, provisions such as literacy tests were designed to eliminate black voters from the electorate in the wake of the Fifteenth Amendment that prohibited voting discrimination on the basis of race. These prohibitions were administered with different standards for white and black aspiring voters. In the North, these tests aimed at knocking out the votes of poorly educated – and poor – white voters, especially newly arrived immigrants. Historians have analyzed these new laws from the vantage point of racial and ethnic formation.² Political scientists have focused upon the question of turnout with respect to such provisions.³ This paper uses the lens of disability to shed new light on these voting changes. Little attention has been paid to what these new rules say about cognitive standards and expectations for elections as voting became more cognitively difficult in the second half of the nineteenth century and the beginning of the twentieth. Also left unspoken in previous discussions are how these rules, their practice, and their enforcement in the courts acted to produce disability identities through legal procedure. Cognitive challenges stymied voters for the first time while prohibitions created an absolute bar to voting based on mental status.

² See, e.g., J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New York: Yale University Press, 1976); Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001); Xi Wang, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860-1920* (University of Georgia Press, 2012).

³ Walter Dean Burnham, "The Turnout Problem," in A. James Reichley, ed., *Elections American Style* (Washington, DC: Brookings Inst. Pub., 1987), 108.

This chapter will use *In re South Charleston Election Contest* as an anchor amplified by other cases to examine how the judicial system addressed the issue of contested elections concerning allegedly disabled voters. This is not, however, a story of people defending their own right to vote in court. Instead, losing parties in elections contested the results based on their readings of increasingly complicated electoral regulations, and folded in claims that lunatics or idiots impermissibly voted. In the absence of guidelines by legislators, judges in these cases had to fill in the blanks to determine whether a particular voter met the legal standard for mental incompetency, and why. As Ariela Gross has noted with respect to trials of racial determination: "Trials brought to the surface conflicting understandings of identity latent in the culture; people who had lived lives on the 'middle ground' of ambiguous status for years now had to fall on one side of the line."⁴

Here, these cases illustrate disability formation as it was occurring, and I argue, call into question the dominant model of disability studies that privileges medical decisionmaking, sidesteps the law, and assumes a biological foundation for impairment. A truism of disability studies is the social model of disability, which replaced the earlier medically-focused model of disability. These cases illustrate, though, that law should not be merely subsumed into the social context of disability formation, but instead should receive analysis on its own. Medical diagnostic criteria are not always practically useful or consistent for the purpose of legal decisions. Law

⁴ Gross, *Double Character*, 118-19.

has its own diagnostic power -- above or against doctors -- and affects people's rights as citizens and their identity within their communities.

Moreover, often disability studies scholarship assumes a fairly straightforward relationship between impairment, which assumes a biological foundation, and disability, which is the cultural meaning attached to that impairment. This paper "troubles" both the expectation that disability has a clear biological component and that there is a firm linkage between the biological fact that defines an impairment and the medical diagnosis that creates a disability.⁵ Here, it is the legal system that provides the diagnosis and it is not always apparent that their decisions are based on biology. I show in the paper examples of people whose biological functioning may be quite similar, yet the legal diagnosis of their identity is diametrically opposite. Furthermore, this disability label is not an all-or-nothing proposition; a person may be labeled as disabled in one legal arena and not in others. Leroy Pitzer and other voters' plights illustrate how the cultural meaning of disability for everyone in society is shaped in part by the experiences of the people with impairments all around them. And, as voting illustrates, these cultural meanings matter even in disputes that ostensibly are not about the political rights of individuals and their relationship to the state. Furthermore, it is

⁵ The canonical work here, is of course, Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*. (New York, Routledge, 2006). The idea of "troubling" has moved over to the disability world, but it is still wedded to medical diagnosis. See, e.g., Bradley Arehart, "Disability Trouble," *29 Yale Law & Policy Review* 347 (2010).

noteworthy that these men become legally disabled as a result of political tactics that have nothing to do with disability on their face.⁶

A model for this dissertation is the work of critical legal theorists examining racial classification cases, in particular, Ian Haney Lopez's *White by Law* and Ariela Gross's *What Blood Won't Tell*. Both Gross and Haney Lopez emphasize the courts' use of common sense and scientific understandings of race – at least as long as scientists and laypeople agreed. When science diverged from common understandings, courts fell back upon “common sense” as a way to understand race. I adopt some of Lopez's and Gross's insights about the “common sense” of race into my model of the “common sense” of disability. For instance, despite an assumption that they would “know it when they saw it,” courts struggled with what type of evidence should be used to define insanity or idiocy. Ultimately, though, I question whether a common sense framework actually *requires* the legal system to provide a rationale for their decisionmaking, as here, the judges render outcomes while ducking the responsibility of outlining a roadmap for their legal brethren to follow.⁷

⁶ This process of the state management of disability formation is reminiscent of Peggy Pascoe's work on racial formation in *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2010).

⁷ Ian Haney Lopez, *White by Law: The Legal Construction of Race* (New York: NYU Press, 2006), 3; Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America*. (Cambridge: Harvard University Press, 2008), 9-10. See also Peggy Pascoe, “Miscegenation Law, Court Cases, and Ideologies of ‘Race’ in Twentieth-Century America.” *Journal of American History* 83 (June 1996), 44-69.

This chapter shows how physical and mental disability identities were created and differentiated as people possessing the former were granted voting access and assistance while the latter was deemed as deserving of disenfranchisement. Strikingly, while the law defined lunatics and idiots as unworthy of the franchise, other men who also had problematic mental states were *not* defined as disabled, and were labeled as old instead. It also reveals that while courts were relatively laissez-faire with their decisions having to do with electoral process, despite the laws on the books, they were quite strict in designating certain people as undeserving of the vote based on their ascriptive status. This chapter delves below the formal electoral rules to show elections as a matter of practice and also of court determination. Courts had a more ad-hoc process than the formal rules would suggest. And they had to make sense of vague rules in terms of deciding who was disabled, and what kind of disability he had.

The court system performed a clean-up function to a filtering system that began at the ballot box. As states, through their constitutions, prohibited lunatics or idiots from voting, it was up to election officials to block their mentally impaired neighbors at the polls. Those voters who were challenged in court decisions, then, were those able to slip through the electoral process unassisted and unmarked until flagged during litigation. Thus, their existence in court cases strongly suggest the difficulty of legally determining mental competency, and how mental competency existed on a gradient. The court system, though, had to collapse these distinctions into an all-or-nothing proposition. Law flattened mental distinctions at the same time it made them salient.

Not only is disability socially constructed, then, but law is also a crucial aspect of that construction.

Meanwhile, in psychiatry, the field fractured amidst debates about different approaches to treating the mind, pessimism about treatment efficacy, and skepticism by jurists about the usefulness of psychiatric expert witnesses. Election contests took place as psychiatry was expanding the definitions of insanity and disputing what constituted it. As law was flattening, psychiatry was getting more complex and convoluted, as mental health doctors expanded the diagnostic possibilities for insanity to conditions such as moral insanity, senility, and insanity with lucid periods. At the same time there was a cascade of different types of legal definitions concerning what constituted lunacy or idiocy, as considerations changed depending on if someone was buying property, committing murder, or writing a will. The explosion of mental disorders made it difficult for legal actors to distinguish the merely eccentric from the truly mentally disordered. Within this range of definitions, where did voting fall? Did it require a high level of mental competence, because voting was so important? Or, did the importance of voting necessitate an expansive definition of competence? Courts did not discuss voting as a positive right; instead, voting fell within the cascade of different types of legal activities that a lunatic or idiot was not permitted to engage.⁸

⁸ Susanna Blumenthal, "The Deviance of the Will," 119 *Harvard Law Review* 960 (2005). The *American Journal of Insanity* spilled over with articles about moral, or partial insanity without delusions and senile dementia. See, e.g., Henry Hurd, "The Treatment of Periodic Insanity," 39 *American Journal of Insanity* (1882-83), 174; Joseph Workman, "Moral Insanity, What is it?" 39 *American Journal of Insanity* (1882-83), 334; "Idiocy or Dementia and Syphilis," 40 *American Journal of Insanity* (1883-84), 78; W.B. Goldsmith, "Insanity, Moral, Case of," 40 *American Journal of Insanity* (1883-84), 162; "Insanity, Senile, Treatment of,"

Australian ballot reform

Australian ballots were an important part of reforming a messy electoral system defined by party politics and rife with shenanigans. As Glenn Altschuler and Stuart M. Blumin have written:

The testimonies of actual voters – in court, correspondence, diaries, and particularly in disputed election cases – demonstrates that the act of voting was much more qualified, hesitant, and casual than we have assumed. Many votes were literally purchased; some were coerced by force, others by drink; and a great many voters cast their ballots in utter ignorance of what and whom they were voting for.⁹

Early nineteenth century ballots were designed and distributed by political parties with distinctive designs and colors for people who were illiterate. Voters would then place the tickets into a box. Sometimes, though, tickets were deliberately deceptive to fool people who could not read English. In Baltimore, for instance, Democrats printed tickets for black voters that had Democratic candidates with pictures of Abraham Lincoln or Ulysses S. Grant. The Michigan Supreme Court in the *Detroit v. Rush* contested election case catalogued the parade of horrors that occurred under this earlier regime. Besides fraudulent tickets, “[v]oters became the subject of bargain and sale, and

40 *American Journal of Insanity* (1883-84), 72; “Insanity, Senile,” 45 *American Journal of Insanity* (1888-89), 45; “Dementia, Condition of the Intercortical Fibres of the Brain,” 47 *American Journal of Insanity* (1890-91), 557; “Moral Insanity,” 47 *American Journal of Insanity* (1890-91), 246; “Dementia Senile,” 51 *American Journal of Insanity* (1894-95), 51; “Case of Moral Insanity,” 52 *American Journal of Insanity* (1895-96).

⁹ Glenn Altschuler & Stuart M. Blumin, *Rude Republic: Americans and Their Politics in the Nineteenth Century* (Princeton University Press, Princeton, NJ, 2001), 272.

the purchaser accompanied the voter to the polls to see that the infamy was consummated by the deposit of the vote placed in his hands.” The court continued: “[d]runken men were taken to the polls, supported by their fellows.” It concluded: “reform [was] absolutely necessary to secure fair and honest elections, good government, and the perpetuity of our institutions.” By contrast, Australian ballots were uniform and required voters to designate their preferred candidate on a standard ballot by scratching off the names of disfavored candidates, circling preferred candidates, or checking a box next to their names. Because of the rampant potential for confusion, political parties undertook education campaigns to inform voters how to navigate the new electoral universe. In Maryland, both Republicans and Democrats built replica voting booths to travel around the state for demonstrations during political rallies. Both parties also organized campaign schools to instruct voters in the use of the new ballot, and printed sample ballots along with instructions in the newspaper.¹⁰

One could interpret these reform practices optimistically, and contend that they were intended to develop a more informed and less corrupted electorate; a more cynical reading would argue that electoral reforms were designed to reform the electorate as well, and limit the ballot to those men considered educated and worthy enough to vote. Historical evidence tends to support the more pessimistic position. While Abram

¹⁰ Peter Argersinger, “From Party Tickets to Secret Ballots,” 82 *Maryland Historical Magazine* 3 (1987), 399-400; 413-14; Ewald, *Local Character*, 70; Altschuler, *Rude Republic*, 127. *Common Council of City of Detroit v. Rush*, 82 Mich. 532 (1890). Ewald, *Local Character*, 91. Peter Argersinger, *Structure, Process, and Party: Essays in American Political History* (M.E. Sharpe, Inc., Armonk, NY, 1992), 142.

Flexner wrote that “[s]ecrecy and a common ballot ‘will encourage the intelligent sentiment to assert itself’....because it ‘protects the voter from intimidation,’” a more common view was expressed by Francis Dutton, the original author of the Australian ballot. As recounted by Eldon Cobb Evans, “a man who is too ignorant to vote correctly is not worthy of the right to vote, because he cannot form that intelligent opinion essential to good government; secondly, that by assisting an ignorant voter you may make it possible to know how an elector votes and so open the door to corruption; thirdly, that the desire to vote will act as an incentive to acquire an education.” George Haynes thundered in a speech:

The state cannot afford to accept the absence of criminal instincts, or even positive goodness, as an adequate requirement from those citizens who are to determine its fate. Self-preservation demands more. ‘Participating in his government’ is no child’s play: it calls for a moderate degree of intelligence, with the power to learn at first hand....Integrity, intelligence, independence of judgment, disinterestedness, a consciousness of the citizen’s debt to the state – these are the qualities of a good citizen. They may all be present without the ability to read or write or ‘cipher,’ yet in such communities as our own the lack of such ability in any man afford strong presumptive evidence that in him some, at least, of these qualities are wanting. The educational qualification emphasizes the fact that the granting of the suffrage should be in recognition of the voter’s having reached a certain plane of mental and moral development, rather than of his having merely filled out twenty-one years of existence.

Historians and political scientists such as J. Morgan Kousser, Eric Foner, Michael Schudson, Daniel T. Rogers, Alexander Keyssar, and Robert Wiebe agree that elite reformers aimed to purify the electoral process by driving those they considered ignorant from the polls. As Alec Ewald observed:

The secret ballot often functioned as a *de facto* literacy test, but many ballots included party symbols, or vignettes, to help voters who could not read well. However, in the same period, many states implemented new formal exclusions, to be administered at the polls: *de jure* literacy tests, typically requiring voters to read and explain an excerpt from the state constitution or another official document.

Twenty-one states implemented literacy tests, while only seven states provided assistance for those who had trouble with the ballot because of illiteracy. Alexander Keyssar contends that these new rules were largely responsible for the drop by a third of the national electorate as millions of men stopped voting.¹¹

How did these reforms work in practice? The *Washington Post* cheered that “[t]he Australian system of voting unquestionably saved the Second and Fourth districts of Virginia for the Democrats, because it eliminated the ignorant and illiterate vote to a large extent. ‘That was the purpose of it,’ adds our contemporary, ‘and it served its purpose.’” Another newspaper article chortled “[i]t is most amusing to watch the ignorant voters trying to get their ballots into the proper boxes. They will study the lettering on the boxes, and laboriously compare them with the slips in their hands, but generally with poor success.” The *Chicago Daily Tribune* added: “The stupid voter was, in fact, worse off than the wholly illiterate one. He could not swear that he could not read English. He had to mark his ballot, therefore, without assistance, and a sorry mess

¹¹ Abram Flexner, *The New Ballot Law of Louisville, Kentucky at Work and Compared with the Massachusetts Law* (1889), 9-10. Eldon Cobb Evans, *A History of the Australian Ballot System in the United States*, (University of Chicago Press, Chicago, 1917). George H. Haynes, “Educational Qualifications for the Suffrage in the United States,” 13 *Political Science Quarterly* 3 (Sep 1898), 512-13. Ewald, Local Character. 94. Twelve states granted assistance to people who were physically disabled or enfeebled by age. Keyssar, *Right to Vote*, 146.

he made of it in many instances. He bored the judges in the first place. He misunderstood their directions. He got angry with himself and the judges and frequently left the booth without voting. Hundreds of such voters remained away from the polls altogether rather than make an exhibition of their stupidity at the polling places." Chicago threw out 3,000 ballots in an 1893 election because of mistakes made by voters. Philip Loring Allen, in the *North American Review*, lamented the fact that nearly four thousand Republicans mistakenly voted for the wrong candidate. "All manner of stories are told of the devices resorted to under this perverted ballot law," he complained:

The names of candidates have been shuffled without warning so that the ignorant voter could not be told to vote according to their position. Names have been printed in old English and other unusual type. The 'Repudiation' party was extemporized and put candidates in nomination in order to bewilder negroes who had been laboriously taught to recognize the word 'Republican.' One Maryland Congressman is said to have established schools in which negro voters were taught to recognize his Christian name 'Sydney' by the two 'ox yokes,' — the Ys — and just as he had succeeded another 'Sydney' was nominated against him by petition so there would still be confusion.¹²

¹² "Australian Ballot in Virginia." *Washington Post* 11 Nov. 1894, 4. "The Australian Ballot: It Will Be Introduced In South Carolina In A Modified Form. An Ex-Member of the State Legislature Outlines the Bill to Be Introduced--The Best Educational Qualification Yet Devised--The Present South Carolina System." *St. Louis Post - Dispatch*, 16 June 1889, 6. "Voting System. Citizens of Chicago Permitted Cast Their Ballots Without Annoyance, and Only the Illiterate Find Cause for Complaint--Thugs, Workers, and Ticket Peddlers Banished--Voters Express Themselves Pleased, and It Is Easy for the Judges and Clerks. The Intelligent Voter Gains. The Respectable Voter's Opportunity. The Old System of Persuading. Advantageous but Expensive. Ticket Peddlers Have Departed." *Chicago Daily Tribune* 4 Nov. 1891, 3. "The Australian Ballot." *Washington Post* 16 Nov. 1893, 4. Philip Loring Allen, 191 *The North American Review* 654 (May 1910), 602.

The new ballots did what they were ostensibly designed for; they prohibited some people from voting while throwing up a roadblock for the illiterate and cognitively challenged. Strikingly, though, literacy tests were not a good way of flushing out the insane. As measured by the 1890 census, out of 74,028 insane persons living in institutions, 51,362 could both read and write; 1,684 could read and not write; 11,833 could neither read nor write.¹³ Presumably insane people living outside of an institutional structure would have similar or better literacy rates.

The new balloting system tripped up the voters of South Charleston as well. Until 1851, Ohio residents regularly voted viva voce, enabling political parties to directly observe individual voters' partisan preferences. While the 1851 Ohio Constitution required elections by ballot, political party managers printed tickets that were easily manipulated by distributing specific ballots to particular voters or by changing the language on the ticket itself. In 1891, Ohio, along with almost every other state in the country, adopted a modified version of the Australian ballot system, which mandated that the government print and provide standard ballots listing all the candidates or issues for voters to mark their choices. Blind, illiterate, and physically disabled voters could receive electoral assistance, while idiot and insane persons could not vote.¹⁴

¹³ US Census Report on the Insane, Feeble-Minded, Deaf and Blind, 1890, 35.

¹⁴ Ohio Constitution of 1851, Article 5, Section 2. Isaac Franklin Patterson, *The Constitutions of Ohio: Amendments, and Proposed Amendments, Including the Ordinance Of 1787, the Act of Congress Dividing the Northwest Territory, and the Acts of Congress Creating and Recognizing the State of Ohio* (Ohio: The Arthur H. Clark Company, 1912), 24. Keyssar, 143; Australia was the first country to use a pre-printed secret ballot,

From the beginning of South Charleston's election contest, things went awry. Using a 1902 law, called the "Beal" law, forty percent of the electorate in a municipality, through petition, could trigger a special election to decide whether the municipality would prohibit liquor. In the previous year, Ohio residents voted 793 saloons out of business. Out of 1,371 townships in the state, 975 were legally dry. Like other Australian-type ballots, the Beal law tickets were designed to be uniform. The Clark County Board of Elections made a mistake, however, and created ballots designed for township elections instead of municipality elections.¹⁵ Though the Beal law stipulated that the ballots should read: "The sale of intoxicating liquors as a beverage shall be prohibited," and "The sale of intoxicating liquors as a beverage shall not be prohibited," the actual ballots simply listed "For the sale" and "Against the sale." Moreover, the order of language was reversed, so that South Charleston electors were offered the choice of allowing liquor before banning it, instead of vice versa. Further complicating matters was that in the last temperance lecture, the speaker instructed potential voters "to be sure to mark their ballots in the upper left hand corner" to register their "dry" vote; on the actual ballot, this would result in a "wet" vote. While the poll monitors and judges recognized the ballot language mistake as soon as the polls opened, the election proceeded, albeit with much nervousness by the "dry" partisans. Ultimately,

in the 1850s. Guy Ward Mallon, *The Ohio Election Law: A Manual for the Guidance of Electors and Election Official* (1892), 49.

¹⁵ "Annual Report of Anti-Saloon League Shows Large Number of Drinking Places Closed by Law," *The Daily Morning Sun*, 2 January 1905, 1. "Charleston Goes Dry by Just 1 Vote: Drys Nearly Defeated by the Wrong Form of Ballots," *The Press-Republic*, 15 March 1905, 1.

approximately half of the town residents voted in one of the heaviest turnouts in South Charleston history. More South Charleston residents voted in the Beal law election than in the previous election for the President of the United States.¹⁶

South Charleston residents were aware that elections commonly ended in the courts instead of at the ballot box. And probably no one in South Charleston was surprised that the 1905 election was so close or that it became the subject of a contentious lawsuit. Founded as a stopover point between Cincinnati and Columbus in 1807, saloons peppered the town from its beginning. From the start, South Charleston earned notoriety for its “many celebrated taverns” and eccentric characters. The question of whether drinking should be allowed, and if so, under what conditions, was politically lively throughout Ohio, and indeed across the United States, at the turn of the century. In 1894, the Clark County Prohibition Committee circulated a letter throughout the county, including South Charleston. “DEAR FRIEND, DON’T FAIL TO VOTE,” Rei Rathbun, the committee chairman urged, “Let nothing keep you away from the polls.” He asked potential voters to “[s]ee any of your Prohibition friends whom you think may be a little careless and remind them to vote.” Even “the sick and weak” had to be “gotten to the polls” if the Prohibition Committee was to prevail.¹⁷

¹⁶ “Annual Report of Anti-Saloon League Shows Large Number of Drinking Places Closed by Law,” *The Daily Morning Sun*, 2 January 1905, 1. “Charleston Goes Dry by Just 1 Vote: Drys Nearly Defeated by the Wrong Form of Ballots,” *The Press-Republic*, 15 March 1905, 1. “Goes Dry: Majority of One Against the Sale of Liquor – In South Charleston – Wets Are Likely to Contest the Election – Ballots Were Not According to Law, it is Claimed – Heavy Vote Was Polled,” *The Daily Morning Sun*, 15 March, 1905, 1.

¹⁷ Albert Reeder, *South Charleston: Early History and Reminiscences by One Who Knows, A Souvenir* (The New Franklin Printing Co.: Columbus, OH, 1910), box 1, folder 1, South Charleston Records, Clark County

Though Clark County only went dry for a year,¹⁸ prohibition activists continued to organize. In 1902, anti-drinking advocates, drawn mainly from the Protestant churches, organized a Law and Order League that monitored the saloons for illegal activity and lobbied for new regulations to restrict their business. Their activities, as documented in the local newspapers, uncovered nightly activity where women¹⁹ and African Americans²⁰ “loitered” and groups of men played slots,²¹ gambled, shot pool, fought, and drank.²² Anti-saloon activists pushed for a Screen Ordinance, which would “provide[] that in any place devoted to the sale of intoxicating beverages by retail, there shall be maintained no screens, colored glass or other obstructions to prevent a free and unobstructed view of the interior of the saloon from the outside” during nighttime hours. Moreover, saloons would be required to have “sufficient light to distinguish

Historical Society [Hereinafter CCHS]. Robert Ross, ed., *South Charleston*, box 1, folder 2, South Charleston Records, CCHS, 1.

¹⁸ “Beal Law Election Today: “Drys at South Charleston Say They are Ready for Contest,” *The Press-Republic*, 14 March 1905, 1.

¹⁹ “Saloon Raid: Five Women and Five Men Taken in by Police – Saloon with Peculiar Name Falls Prey to the Officers’ Net – Practice Must Stop,” *The Daily Morning Sun*, 6 January 1905, 1; “Saloon Raid: Thirty-Three Loiterers and Two Proprietors Arrested – Ed Hynes’ Place Again Visited and Thirty Men and Women Taken in Charge,” *The Daily Morning Sun*, 12 March 1905, 1.

²⁰ “Saloon Raid: Nineteen Loiterers Taken Into Custody by the Police – Montgomery & Ellicott’s Place on Center Street Contained a Goodly Number of Negroes,” *The Daily Morning Sun*, 5 February 1905, 2.

²¹ “Fined: For Exhibiting A Slot Machine in His Saloon – First of the Series – Of Cases Against the Indicted Men – Edward Hines is Fined \$50 and Ten Days in Jail and Placed Under Bond,” *The Daily Morning Sun*, 14 February 1905, 1.

²² “Saloon Cases: Among Those to be Threshed Out During Present Term,” *The Daily Morning Sun*, 5 February 1905, 12.

from the outside the features of any person inside the saloon." In short, a person could not visit a saloon anonymously; to be a saloon-goer meant that one had to be willing to show his or her face to the rest of the town and face the possible social consequences.²³

On February 28, 1905, South Charleston residents crowded into the gallery of the council chamber as their council representatives debated the measure. The council clerk read aloud the names, "representing a large percentage of the prominent business, social, and political interests of the city," listed on petitions from nine local churches. The Ordinance passed by one vote. Mayor Bowles, however, issued a veto. With such a narrow margin of victory, the anti-saloon forces were unable to muster enough support to overcome the veto and actually enact the ordinance. Though the morning newspaper noted in the days after the Screen Ordinance vote that the "saloons closed promptly at twelve o'clock" and liquor dealers "cheerfully obeyed" closing time, the saloon owners were aware of the growing forces arrayed against them. South Charleston churches held revival meetings, added to their numbers through conversion, and joined forces with the Women's Christian Temperance Union. Finally, anti-saloon activists targeted

²³ "Beal Law Election Today: "Drys at South Charleston Say They are Ready for Contest," *The Press-Republic*, 14 March 1905, 1. "Saloon Raid: Five Women and Five Men Taken in by Police - Saloon with Peculiar Name Falls Prey to the Officers' Net - Practice Must Stop," *The Daily Morning Sun*, 6 January 1905, 1; "Saloon Raid: Thirty-Three Loiterers and Two Proprietors Arrested - Ed Hynes' Place Again Visited and Thirty Men and Women Takes in Charge," *The Daily Morning Sun*, 12 March 1905, 1. "Saloon Raid: Nineteen Loiterers Taken Into Custody by the Police - Montgomery & Ellicott's Place on Center Street Contained a Goodly Number of Negroes," *The Daily Morning Sun*, 5 February 1905, 2. "Fined: For Exhibiting A Slot Machine in His Saloon - First of the Series - Of Cases Against the Indicted Men - Edward Hines is Fined \$50 and Ten Days in Jail and Placed Under Bond," *The Daily Morning Sun*, 14 February 1905, 1. "Saloon Cases: Among Those to be Threshed Out During Present Term," *The Daily Morning Sun*, 5 February 1905, 12.

saloon owners' pocketbooks through legal action. At the start of the January 1905 term for the Clark County criminal court, saloons faced seventy-one indictments for liquor law violations, selling to minors, and Sunday operating hours, and twenty-six indictments for gaming devices. Over the three-year course of the Law and Order League's actions, saloon owners paid \$12,000 in fines and costs to the Clark County treasury.²⁴

In Ohio, a new bill threatened to put the saloon owners out of business entirely. Less than a month after the Screen Ordinance battle, South Charleston prepared for a Beal law election. The nine South Charleston churches marshaled enough names for the petition through several revival meetings. Church ministers spoke about the evils of alcohol in their sermons and the churches hosted speakers from Cincinnati and Columbus to rally potential "dry" voters. The owners of the six saloons and two drug stores identified sympathetic "wet" men and asked them to promise to vote in the

²⁴ "Screen: Ordinance is Passed by a Narrow Chance Threatened With Defeat - Which was Averted by Timely Conference Before Meeting - Petitions From Churches Read - Vote Unchanged Apportion for Sewer Election," *The Daily Morning Sun*, 1 March 1905, 1. "Saloons: Closed Promptly at Twelve O'Clock Last Night - Orders Passed Around on the Quiet are Cheerfully Obeyed by Liquor Dealers," *The Daily Morning Sun*, 3 March 1905, 2.

"Big Revival: At South Charleston Has Stirred Up the Town - More than a Hundred Conversions," *The Daily Morning Sun*, 19 January 1905: 6; "Joint Meeting: Of Women's Christian Temperance Unions Yesterday - Celebrate Anniversary of Crusades in This City and Offer Memorial to Frances E. Williard," *The Daily Morning Sun*, 20 February 1905, 3; "Saloons: Are Discussed in Local Pulpits by Able Speakers. Review of Last Year's Work Is Made by Officials of Anti-Saloon league of Ohio. Hon. T. H. Clark and W.B. Wheeler Expound Upon Temperance Question," *The Daily Morning Sun*, 13 February 1905, 1.

"Court Fines: In Saloon Cases for Three Years Amounts to \$12,000 - An Average of \$4,000 a Year Since the Formation of the Law and Order League," *The Daily Morning Sun*, 5 March 1905, 8.

election. On the eve of the election, neither side knew which one would prevail. Despite the disadvantage, the “dry” side prevailed by just one vote. When they heard the news, the anti-saloon activists cheered, but they knew that their victory might be short lived – again. The “wet” side had 10 days to petition the Clark County Probate Court for judicial review. Would they petition, and if so, on what grounds?²⁵

Observers actually had substantial grounds for thinking about appeals and petitions, for they had seen similar cases unfold across the state. Beal law election contests alone resulted in fifty-three published legal opinions in Ohio. Local newspapers in South Charleston reported multiple electoral incidents in neighboring towns. Consider, for example, the case of Pittsburg City, only twenty miles away, where several wards reported riots at the polls and one man dropped dead “from excitement.” The local judge attempted to issue a bench warrant for the entire election board, but a fight among the police officers thwarted his attempt. Later, the sheriff discovered a ballot box with a false bottom and over 100 fake ballots stuffed inside. Temperance advocates in the town of Washington Court House raised \$10,000 to litigate a case of illegal voting against the election judges. They were accused of an elaborate scheme that involved using carbon paper and duplicate ballots to replace official “dry” votes. Like South Charleston, the residents of North Lewisburg did not know which side of the

²⁵ “Beal Law Election Today: “Drys at South Charleston Say They are Ready for Contest,” *The Press-Republic*, 14 March 1905, 1.

“Mayor: To Blame No More than People Who Elected Him – For the Recent Defeat of the Screen Ordinance – Church People Do Not Do Their Duty,” *The Daily Morning Sun*, 15 March 1905, 6.

dispute would prevail. Residents voted all day; schoolchildren, who had the day off from school for the election, roamed the streets and helped the temperance workers; the Woodstock Band entertained the crowd. When the ballots were counted, and a tie was announced, Rev. Dr. Woodward, the pastor of the Methodist church, announced that the temperance side would contest the election. This statement so enraged "Smuck" Landis, the son of a saloon owner, that he struck the pastor in the head. Luckily, bystanders were able to rush Landis into jail and avert further rioting.²⁶

While South Charleston residents watched and waited for a potential lawsuit, cases such as these loomed large in their minds. Meanwhile, details about the improper ballots and reports of people mistakenly casting ballots for the wrong side filled the local newspapers. The newspapers speculated that the "wets" would petition the court based on the faulty ballots, even though the mistake favored their side. Two days after the election, *The Press-Republic* provided another possibility for litigation. Leon H. Houston, a wealthy merchant, realized that he accidentally voted for the "wet" side. He

²⁶ "Disgraceful: Scenes in Pittsburg City Election Yesterday - Citizens' Ticket Defeats the Regular Republican Ticket - Many Arrests Made and Much Fraud Alleged," *The Daily Morning Sun*, 22 February 1905, 7.

"Both Sides: Of Temperance Question at Washington C.H. - Talk of Criminal Proceedings," *The Daily Morning Sun*, 4 April 1905, 1.

"Beal Law Election is a Tie: North Lewisburg Minister Struck By a Son of a Saloon Keeper," *The Press-Republic*, 12 April 1905, 1.

went back to his polling place and the judges allowed him to cast another ballot for the “dry” side.²⁷

As predicted, two saloon owners, James B. Malone and John H. Way, filed suit in the Clark County Probate Court a half hour before their deadline for litigation expired. The final decision rested with Springfield native Judge Frank Geiger, the Clark County Probate Court Judge, newly installed after the previous probate judge died three days after the election.²⁸ The owners argued that the Beal law election was illegal and void and asked that it be set aside on multiple grounds: “[1] that no proper ballots were printed, [2] that persons not entitled to vote were allowed to do so, [3] that one ballot was thrown out, changing the result of the election, and [4] finally that said election was petitioned for by less than 40 per cent of the qualified electors of the village, as is required by law.”²⁹ While the first, third, and fourth claims were fairly straightforward, the claimants were vague on who exactly voted illegally. Filing the petition gave them a month’s reprieve to prepare their case – and find illegal voters.

²⁷ “Saloon Men of South Charleston Are Preparing for Contest – Representatives were Here Yesterday to Retain a Lawyer and Will Take Action,” *The Daily Morning Sun*, 17 March 1905, 3.

“Was Allowed to Change His Ballot,” *The Press-Republic*, 16 March 1905, 1.

²⁸ “Career of Great Usefulness Has Come to a Close: Judge Mower is Dead – End Came to His Suffering at 3:15 Yesterday Afternoon – Funeral Will take Place Monday – Bar Association Will Meet Today, Memoir,” *The Daily Morning Sun*, 18 March 1905, 1.

²⁹ “Beal Law Election Contested,” *The Press-Republic*, 25 March 1905, 7.

In all, the lawyers for both sides issued over fifty subpoenas for witnesses.³⁰ Their efforts flushed out three people with questionable votes, besides the two votes of Leon H. Houston. Two of them, Charles Warrington and Laybourn Haughey, were blind and 93 years old, respectively. They arrived together in a carriage and cast their ballots at the curb with the assistance of poll workers, instead of within the polling place itself. Both men said they cast “dry” ballots. As for the third, Leroy Pitzer, the “wets” argued that he was mentally deficient and his vote was illegal. So Geiger had three issues of disability to solve: whether the assistance rendered based on blindness and old age was valid and whether Pitzer was legally mentally deficient. Thus, in this sense, elections had a legal educative function, as citizens learned about the laws of elections through the judicial opinions that were rendered through appeals. As Ariela Gross has observed: “[e]ven a relatively small number of cases could have had a far greater cultural impact than a much larger number of cases today, because cases in the nineteenth century were public events, many of them notorious, and they took place at the central meeting-place of towns and rural areas: the county courthouses.”³¹ Here, ordinary people also got to learn about disability through the same mechanism.

For the procedural claims raised by the litigation, Geiger tilted his solutions towards allowing the electoral process to proceed without interference by the interested political factions or an abundance of binding rules and regulations. For example, he

³⁰ “Fifty Subpoenas: Issued for Witnesses in Beal Contest,” *The Daily Morning Sun*, 5 April 1905, 6.

³¹ Gross, 119

decided that the phrase “forty per cent. of the qualified electors at the last preceding municipal election” on a petition to trigger a Beal law election meant 40 percent of the people who actually voted, and not 40 percent of the total qualified electorate because the former would give a “fixed and certain” rule that would allow more triggered elections. Furthermore, he did not allow the “wets” to introduce claims that were not a part of their original petition; in particular, the argument that the South Charleston mayor’s published proclamation for the Beal election was inaccurate as to the time of the election. Though the “wets” claim would provide additional information on the validity of the election, Judge Geiger refused to hear the claim, out of concern that it would further complicate the litigation, “open[] the door wide to the introduction of testimony upon any point” and give the other side insufficient notice to prepare its case. Significantly, he pointed to the high turnout for the election as evidence that the “electors of the municipality were fully informed of the pendency of the election and participated in the same” and that the possibly inaccurate mayoral proclamation did not create a practical problem. Thus, Geiger did not address the possible unsettling or formal problems of the election and instead focused upon the practical success of electoral turnout.³²

Geiger followed the same course of favoring practical results over formal inaccuracies with the issue of the ballot design. He noted that despite the discussion about the mistake, the election continued and contesters on both sides cast ballots.

³² *In re South Charleston*, 4, 7, 9.

Citing a general legal encyclopedia, Geiger argued: “The American and English Encyclopedia of Law, Volume 10, page 714, state the proposition, ‘The rule of law is well settled that objection to the form and contents of official ballots must be made before the election, and that when a person fails at the proper time to take any steps to correct errors in such ballots, he can not after being defeated, be heard to complain if there is an error in the ballots of which he had knowledge, and he might have corrected prior to such an election.’”³³

Despite the newspaper accounts and legal testimony of voters who mistakenly voted for the wrong position because of the incorrect ballots, Geiger characterized the ballot printing error not as a problem that would trouble the electorate as a whole, but as a case of loser’s remorse on the part of the “wets.” Geiger wrote: “a large number of cases are cited sustaining this proposition,” yet, these cases all concerned problems in ballots that list political candidates, and not political issues.³⁴ Therefore, in the precedent he cited, the blame for not raising the ballot errors would fall squarely on the shoulders of the contesting political parties. Here, Geiger allocated responsibility for electoral management on the interested factions even though they were not the formal parties of interest. They were expected to settle their deal making at the polling place through informal means and decisions, and thus, not anticipate a legal ruling to settle the election. Though this solution would ostensibly reduce post-election litigation and

³³ *Ibid.*, 12-13.

³⁴ *Ibid.*, 13.

perhaps as a result increase the reliability of election results, it would also distribute power to involved factions and not the electorate as a whole. Again, Geiger posited a lack of widespread practical problems in the vote, contending that “the objection that the voters were deceived by the form of ballot has not great weight, as they are supposed to be intelligent enough to read the ballot;”³⁵ consequently, though the ballots were “not technically accurate nor formal”³⁶ they were sufficient enough for the election, based on assumptions about the cognitive competence of the electorate.

Old age and physical disability

The last claims at issue, however, brought into relief the question of whether the voters truly were intelligent and savvy enough to navigate the election. Geiger grouped the possible voting irregularities because of the blindness and old age of Charles Warrington and Laybourn Haughey together, while separating out Leroy Pitzer. The “wets” argued that Warrington and Haughey’s votes were improper and should be declared illegal because they did not mark their own ballots or deposit them into the ballot box. According to the Ohio Australian Ballot Law, otherwise qualified but physically infirm electors could receive voting assistance under specific conditions.³⁷

³⁵ *Ibid.*, 14.

³⁶ *Ibid.*, 13, citing 10 *American and English Encyclopedia of Law* (1898), 725.

³⁷ “An elector who declares to the presiding judge of election that he is unable to mark his ballot by reason of blindness, paralysis, extreme old age, or other physical infirmity, and such physical infirmity is apparent to the judges to be sufficient to incapacitate the voter from marking his ballot properly, may,

While the “drys” responded that blind and old people were allowed to receive assistance in voting, they did not emphasize that the election judges followed the procedure outlined in the Australian Ballot Law. Though both the court documents and newspaper accounts describe two judges walking to the carriage, marking the ballots, and depositing the marked ballots in the polling box, neither one indicates that the judges were of opposing parties or that Warrington and Haughey told the presiding judge of election that they needed assistance.³⁸ Instead of highlighting the formal law, the “drys” contended that Warrington and Haughey were longstanding residents – and voters – of South Charleston and that there was no evidence of voter influence or ballot alteration.³⁹ In essence, their reputations as respectable community members was used to vouch for their behavior as political partisans.

Judge Geiger agreed with the “drys” arguments in validating Warrington and Haughey’s votes – and sidestepping the formal requirements of the Australian Ballot Law. He contended that under the law, electors with physical infirmities were allowed assistance, and

upon request, receive assistance in the marking thereof of two of the judges of election, belonging to the different political parties, and they shall thereafter give no information in regard to the matter” *Ibid.*, p. 16-17 citing Ohio Australian Ballot Law, Section 2966-37.

³⁸ *Ibid.*, 16-19; “Waxing Warm: Both Sides in South Charleston Contest Fighting Hard – Wets Claim that Persons Physically Unable to Mark Ballot Were Voted By Drys,” *The Daily Morning Sun*, 8 April 1905, 8; “End: Of Beall Law Contest Case is not Yet. Attorneys are Fighting Every Point Raised by Hand to Hand,” *Springfield Daily Gazette*, 13 April 1905, 3.

³⁹ *In re South Charleston*, 15-16; “End: Of Beall Law Contest Case is Not Yet. Attorneys are Fighting Every Point Raised by Hand to Hand,” *Springfield Daily Gazette*, 13 April 1905, 3.

[i]t may well happen that the physical infirmity is such as would prevent the voter from leaving the carriage or reaching the actual presence of the ballot box, and the paralytic may be suffering from paralysis of the legs as well as the arms. The law constitutes the election officers the arm, or the legs, or the eyes of the afflicted person, as the case may be. There is no reason why a person paralyzed in the arms should receive assistance, while those having no use of the legs should have no assistance.

That is, Geiger upheld the votes in this particular case, because in a possible hypothetical case, a voter with paralyzed arms and legs might not make it to the ballot box. Strikingly, he focuses upon infirm arms and legs when it is really infirm minds that were at question with respect to electoral assistance. Of course, in this instance, there was no evidence that Warrington or Haughey were unable to manage the trip to the actual polling place, or any discussion of why the scenario that occurred could be potentially problematic because in a highly charged election, unethical judges could change the ballots while “assisting” infirm voters. Geiger argued that though it “is highly proper that restrictions be placed upon the method of casting a ballot...it is equally proper that certain latitude be given in case of necessity.”⁴⁰ Here, apparently, was an instance where such latitude was warranted. The reason? The purpose of the Australian Ballot Law “is not the secrecy of the vote, but the purity of the election.”⁴¹ Although the two men’s votes were not secret, since there was no evidence of fraud, then the votes should not be invalidated. Furthermore, as the “judges are properly

⁴⁰ *Ibid.*, 18.

⁴¹ *Ibid.*, 18-19.

assumed to be familiar with the law”⁴² and the voters relied upon the judges’ instructions, in the absence of fraud, the votes should be counted, “unless such irregularity is of sufficient importance to effect [sic] the honest expression of the people.”⁴³ Geiger’s decision rested upon evidence of fraud, but it is unclear how the “wets” could have provided enough proof to overturn his ruling. Once the judges left the carriage, Warrington and Haughey could not testify as to what happened to the ballots and if the judges were corrupt, they certainly would not mention it in court. Moreover, it is unclear how Geiger concluded that the judges were familiar with the Australian Ballot Law, as there is no evidence that they followed it. What *is* certain is that Geiger was loath to throw out the two votes despite formal legal irregularities in the absence of clear and compelling evidence that there was practical fraud and deception.

Geiger was not the only judge to make a determination allowing older citizens to vote despite evidence that these voters might have difficulties in practice that would raise questions about their mental state. Judges primarily followed the guidance of an 1869 Ohio case, *Sinks v. Reese*, which differentiated between an idiot who was denied the right to vote, and a man who, though greatly enfeebled by age, was allowed to vote.⁴⁴ They also cited the standard provided for in Judge McCrary’s treatise on

⁴² *Ibid*, 19.

⁴³ *Ibid*.

⁴⁴ *Sinks v. Reese*, 19 Ohio St. 306 (Ohio Sup. Ct. 1869).

elections: “the vote of a man otherwise qualified, who is neither a lunatic nor an idiot, but whose faculties are simply greatly enfeebled by age, ought not to be rejected.”⁴⁵ English precedent also indicated an acceptance of the votes of old, potentially problematic, voters. In the *Oakhampton Case*, the voter in dispute “was upwards of seventy-five years of age, was affected with a paralytic tremor, and was extremely disconcerted by the noise at the poll; and when the officers asked him for whom he wished to vote, he could not answer, but named two former candidates; but upon the noise being quieted, in answer to a question by his wife he named the candidates of one party, for whom he had promised to vote; and it was held that his vote was good.”⁴⁶ In addition, in the *Bridgewater Case*, the court noted that “the voter’s mind had become disordered, so he frequently lost his memory, his knowledge of accounts, and of the value of money, so he could do but little at his trade.”⁴⁷ On the other hand, the court noted that, “he took an active part at the election in favor of his candidate,” thus his vote was held valid.⁴⁸

Or consider a particularly telling case, *Wickham v Coyner*, in which Emmet Wickham argued that the votes of the entire township of Delaware county should be thrown out. Barring that, he said, the court should throw out the 172 votes cast by

⁴⁵ George Washington McCrary, *A Treatise on the American Law of Elections* (Chicago: E.B. Myers, 1875), 41.

⁴⁶ 1 Fras. El. Cas. 166.

⁴⁷ 1 Peckw. El. Cas. 106.

⁴⁸ 10 *American and English Encyclopedia of Law*, 608.

inmates of the county infirmary.⁴⁹ Wickham charged that, “among the inmates of the said Infirmary there are about forty illiterate and weak-minded men, some of whom are lunatics, some imbeciles, but all of which by reason being marked mentally, or of ignorance, were unable to properly mark their ballots.”⁵⁰ Furthermore, according to Wickham, his opponent, George Coyner, “frequently called at said infirmary, and ... had induced all of said inmates to vote for him” and no one else.⁵¹ In addition, the election judges assisted in this debacle by assisting the inmates in their votes.⁵² Coyner conceded that the infirmary inmates voted, but denied, “that any of such men to wit illiterate, weak-minded, lunatics, and imbeciles voted.”⁵³ Rather, “all of the inmates of said infirmary voted were of sound mind, intelligent and fully capable mentally to vote.”⁵⁴ Though some men were “decrepit and feeble,” that was because of their old age. Instead of throwing out the election, the *Wickham* court made fine distinctions among the inmates. Following Ohio law, lunatics and idiots were denied the vote, while voters unable to mark their ballots because of “blindness, paralysis, extreme old age or other physical infirmity,” could receive assistance.⁵⁵ Eventually, they found that two

⁴⁹ Wickham v Coyner, 1902 Ohio Misc. LEXIS 258, 4 (1902).

⁵⁰ Wickham v Coyner, case record no. 2, 226. Ohio State Archives [hereinafter OSA]

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid., 231.

⁵⁴ Ibid., 231.

⁵⁵ Wickham v Coyner, 27.

inmates, William Palmer and C.W. Shotboldt, were insane and thus disqualified from voting, while the other infirmary inmates received appropriate assistance for their maladies.⁵⁶

Other cases forced judges to consider similar forms of differentiation. In Kentucky, Weller charged that Muenninghoff engaged in election fraud with respect to the Home for the Aged and Infirm in the City of Louisville, otherwise known as the Alms House. Every single inmate who voted from the Alms House voted for Muenninghoff. Weller charged that Muenninghoff, in concert with J.K. Westfall, the Home Superintendent, brought the inmates to the polling place and directed many of them “who were so old, infirm and feeble-minded as not to understand or appreciate what they were doing” to vote for Muenninghoff.⁵⁷ At least forty of the inmate voters fell into the latter category, according to Weller, as “they had no understanding of said election and not sufficient mind to vote for any candidate.”⁵⁸ Furthermore, the election officers contributed to this conspiracy by allowing voters to vote inappropriately and openly, contrary to Kentucky law; physically disabled voters could receive assistance from election officials, provided that they take an oath vouching for their disability.⁵⁹

⁵⁶ Wickham v Coyner, 20.

⁵⁷ Weller v Muenninghoff, 159 S.W. 632 (Ky. Ct. App. 1913).

⁵⁸ Weller Court Records. Kentucky Department for Library and Archives [hereinafter KDLA]

⁵⁹ Section 1475 of the Kentucky Statutes provides: Any elector who declares, on oath, that, by reason of inability to read the English language, he is unable to mark his ballot, may declare his choice of candidates or party ticket to the clerk, who, in the presence of the judges, sheriff and challengers and the elector, shall, with his pencil, mark a dot in the appropriate place for the cross-mark, to indicate the

Weller argued: "The law contemplates a free expression of the will of the voter. It does not contemplate that men under the control of another, subject to the will of another, shall be voted like slaves." Westfall had his druggist, F.M. Scales, create around 100 tickets for Muenninghoff that were distributed to the inmates. Westfall personally escorted the inmates to the polling place. Sixty inmate ballots were questioned at the polling place and forty-five inmates testified in the case. Taking the testimony for the men was compounded by their poverty and disability. The Alms House was 5 miles away from the Louisville Court House. Weller had to make available transportation to the Court House so the men could testify. For those who were unable to even make the car trip, the court went to the Alms House itself to take witness testimony.

John Sanders testified that, "Capt. Westfall would...hand one of these cards and tell them to vote this ticket."⁶⁰ Also, Captain Westfall went into the polling place itself with the men. Henry Stephans concurred: "They would come in there and have a ticket there with the names on they wanted to vote for, asked how they wanted to vote they would say, 'I don't know, there is the ticket,' and the election officers would take it off

choice of the elector. The clerk shall then fold and deliver the ballot to the elector, and instruct him to retire to the booth and there mark his ballot by making a cross-mark either in the squares showing dots or other squares he may desire. In all other respects he shall vote as is required of other electors. In case any person applying to vote is blind, and shall so declare on oath, the clerk shall be allowed to mark his ballot for him in the presence of the other officers of election, and the challengers allowed by law; or, in case any person shall be so physically disabled as to be unable to mark his ballot, and shall so declare, on oath, the clerk shall have the right to mark his ballot as in the case of a blind person applying to vote.

⁶⁰ Weller Court Records. KDLA

the ticket and stamp it on the ballot.”⁶¹ The men “never specified any one party, just put down the ticket.”⁶² After one of the election judges objected, Stephans said: “After that they came in that looked like they were disabled, they would vote without swearing them, and if they looked like they were able to vote they would swear them.”⁶³ Ben Schaffner, the Republican election official at the polls, loaned some of the men his glasses so they could see and stamp their own ballots. He testified: “I told the boys, I was probably the only old officer in there, I told the youngsters to swear all these men as they came in there, so we won’t have any trouble.”⁶⁴ Louis Rabnecker testified that he saw Westfall take 25 or 30 men in to the polling place until Weller stopped him. John George, an Alms House resident, testified that Westfall “gave me – made a list out for me to vote.”⁶⁵ He did not read any of the names on the list nor did he know anything about any of the men who were running for office. He was not sure whether he voted for Weller or Muenninghoff. He gave the list “to the clerk and he stamped it for me.”⁶⁶ He did not have to swear an oath. Phil Harman said: “I handed my ticket down, I told them I wasn’t qualified of stamping the ticket and asked them to stamp it for me.”⁶⁷

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

G.H. Shea told the clerk he was nervous and unable to stamp his ballot, so the clerk did it for him. J. Nolan threw away the card given to him by Westfall, stamped his own ballot, and went in the booth by himself. John Baechler also did not use the ticket. He declared: "I voted how I wanted. Nobody can write me for what I shall vote....when I came in I said 'I can read and write, I can vote for myself, I need nobody, and the officer gave me the paper and I go up behind the curtain and voted right as the law allows.'"⁶⁸ The voters themselves gave mixed accounts as to whether they could vote independently; the testimony of the other election workers indicated that they tilted towards needing assistance, which ranged from providing glasses for the visually disabled to marking the ballots on behalf of the voter. Yet like in the case of *Wickham*, this extensive accommodation and possible political corruption was upheld.

In another case, *Gill v. Shurtleff*, the Illinois Supreme Court upheld the votes of Jasper Havens, Daniel Green, and Alfred Cady. According to the court, "Jasper Havens was an old man, and quite feeble, and that he stated to the election officers that he was unable to mark his ballot, and that he was assisted by one of the judges in the preparation of his ballot upon his mere unsworn statement as to his disability."⁶⁹ Daniel Green was "nearly blind" and also received assistance in marking his ballot while not swearing an oath. Alfred Cady was blind as well and "likewise assisted by the election

⁶⁸ Ibid.

⁶⁹ *Gill v Shurtleff*, 183 Ill. 440, 56 N.E. 164 (1899).

officers to prepare his ballot without being required to make oath as to his disability.”⁷⁰ Under Illinois law, such assistance was valid only if the voter declared under oath that he was illiterate or physically disabled. The court weighed the propriety of adhering to the letter of the ballot standards with throwing out the votes of the three men, and ruled in favor of allowing the men to vote.

In the case of *Edwards v. Logan*, two men in particular voted illegally. One, Lewis Hill, was “conclusively shown to have been an idiot.”⁷¹ The other, George Parsley, was declared a lunatic. By contrast, though, William Lindsey was eighty-three years old and “enfeebled by age,” but he was found to have “mind sufficient to comprehend the act of voting.”⁷² The court, citing *Sinks v. Reese*, held “that the vote of a man, otherwise qualified, who is neither an insane person or an idiot, but whose faculties are simply enfeebled by age, ought not to be rejected.”⁷³ This was despite the fact that witnesses were more skeptical of Lindsey’s competence. Robert Lindsey remarked of William Lindsey’s mind “well, I hardly know what to say about that, it is bad of course.”⁷⁴ Asa Houchin concurred that Lindsey’s mind was “very bad...for some seven or eight

⁷⁰ Ibid.

⁷¹ *Edwards v Logan*, 70 S.W. 852 (Ky. Ct. App.), 327.

⁷² *Edwards Court Records*, KDLA.

⁷³ Ibid.

⁷⁴ Ibid.

months.” Houchin did not think that Lindsey could vote intelligently.⁷⁵ The court apparently disagreed.

Granville Hull, in the case of *Welch v. Shumway*, was also found enfeebled by age. He too, like William Lindsey, was allowed to vote. Hull went to the polling place in Galesburg, Illinois, intending to vote for Welch as Mayor. He was unable to mark his own ballot, and an election judge prepared it for him instead.⁷⁶ An elderly man who died before the case reached the Illinois Supreme Court, Hull was nearly blind and hard of hearing.⁷⁷ He had lived with relatives in several places in Illinois before moving to Galesburg to live with his daughter in 1906.⁷⁸ His daughter testified that “[w]e children just kept him as we could and then sent him to another one of the children, but he had gotten so bad we could not take care of him. As a result, she sent him to Robert S. Parker’s house for care and lodging.⁷⁹ Hull’s daughter and son-in-law both testified that Hull’s mind was too impaired for him to vote. E.H. Carlton, Hull’s son-in-law, testified that Hull “had about the same mind as a child....He was just the same as a child and had to be taken care of the same as a child.”⁸⁰ The Carltons tried to get a judge to send Hull to Watertown State Hospital — a lunatic asylum — but he was not admitted

⁷⁵ Ibid.

⁷⁶ Reply Brief for Appellant, Edwards Court Records, KDLA, 40.

⁷⁷ *Welch v. Shumway*, 83 N.E. 549 (Ill. Sup. Ct. 1907), 576.

⁷⁸ *Welch v Shumway*, case file book 1, Illinois State Archives [Hereinafter ISA]

⁷⁹ Ibid.

⁸⁰ Ibid.

because he was incurable. Instead, they sent him to Robert Parker's house. While Carlton had not seen Hull for three or four weeks prior to the election, he saw him later on that election day, after Hull had voted. Carlton became mad when Parker told him that Hull had voted. Mary H. Carlton said that her father's mental state "was just like a baby."⁸¹ She added: "[h]e was helpless. He could not take care of himself when nature called. He had no mind at all."⁸² She testified that "[a]fter the middle of January [in 1907] he had no mind whatever. Up until that time there were times when he did know some things."⁸³ The only thing he knew after the middle of January was the identity of his children. Occasionally, they had difficulties where Hull would leave Parker's house and attempt to go to his home, as he did not know where he lived. Someone would find him, phone one of the children, and they would deliver him back to Parker.

Parker, who took Hull to the polls and swore him in as a legal voter, believed that he was lucid enough to vote – for his side in the election, of course. Roy L. Piatt, an election judge who helped Hull at the polls, also testified that Hull was mentally capable of voting, though he said that Hull was "nearly blind; hard of hearing; very decrepit and appeared to be a very old man."⁸⁴ F.O. McFarland, the Deputy Circuit

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

Clerk, concurred. Hull signed a disability form at the polls that he was not physically able to vote because of paralysis; it said nothing about his mental condition.

John Nolan, one of the election judges, remembered Parker bringing Hull to the polls. The election judges asked Hull about how long he had resided in the precinct and his qualifications to vote. Nolan testified that Hull answered the questions, but “his hearing and eyesight seemed bad,” he was “very nervous and unable to hold a pen steady.”⁸⁵ He believed that there was nothing unusual about Hull’s mental condition. The judges helped Hull into the booth and had to “help him make his ticket and he asked us who were on the different tickets.”⁸⁶ Nolan concluded: “[t]here was nothing in his actions that would excite my suspicion as to the soundness or unsoundness of the man’s mind, anymore than any other old decrepit man.”⁸⁷ The *Welch* Court quotes the McCrary treatise to establish a standard for assessment: “the test would probably be the same as in cases where the validity of a will is attacked on the ground that the testator was not of sound mind when it was executed. If the voter knew enough to understand the nature of his act, — if he understood what he was doing, — that is probably sufficient.”⁸⁸ This standard did not apply, however, for those who were “greatly

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ *Welch v Shumway*, 76.

enfeebled by old age.”⁸⁹ For those voters, their ballots were valid. Thus, though the court recognized Hull’s impaired mental condition, and that he was “undoubtedly greatly enfeebled by age,” they did not reject his vote.⁹⁰

Judges linked together physical assistance and feebleness due to age, and despite indication of mental deficiencies, decided to characterize the maladies of old age as distinct from insanity or idiocy. These cases do not give much explanation for why this exception was carved out, but *In re South Charleston* may provide a clue. Men who were considered respectable and longstanding members of the community were considered to have a vested right to participate in the political life of the community. This sentiment was not granted to those considered insane or idiotic. Despite similar impairments, the results were quite different. One group became disabled while the other did not.

Insanity or Idiocy?

Not all men with mental conditions were deprived of the vote. In addition to exceptions made for the elderly, English law suggested that lunatics who were lucid intermittently could vote during their sane periods.⁹¹ In addition, men “laboring under hallucinations or delusions, not relating to political matters, and not to such an extent as

⁸⁹ *Ibid.*, 75.

⁹⁰ *Welch v Shumway*, 76

⁹¹ *Orme on Elect.* 101; *Rogers on Elect.* 104; *Bishop’s Castle Case*, *Heywood’s County Elect.* 260; 10 *American and English Encyclopedia of Law*, 609.

to prevent his transacting ordinary business” were not excluded from the vote.⁹² The prevailing standard for assessing whether men with mental conditions could vote was found in McCrary’s treatise:

The vote of an idiot, or person *non compos mentis*, ought not to be received, and if such a person has voted, his vote may be rejected upon a contest, without a finding in lunacy....But the vote of a man otherwise qualified, who is neither a lunatic nor an idiot, but whose faculties are merely greatly enfeebled by old age, is not to be rejected....When a vote is attacked on the ground that the voter who cast it was *non compos mentis*, it is necessary to establish satisfactorily, by competent evidence, the alleged want of intelligence, and the test would probably be about the same as in cases where the validity of a will is attacked on the ground that the testator was not of sound mind, when it was executed. If the voter knew enough to understand the nature of his act, if he understood what he was doing, that is probably sufficient.⁹³

So what does the McCrary standard tell us? That a challenge can be acceptable without any due process indicates a presumption that the community can recognize lunacy without special training. Having a will standard means that the weight of evidence is on the testimony of other people, since in that case the person in question is dead and

⁹² Montgomery Hunt Throop, *A Treatise on the Law Relating to Public Officers and Sureties in Official Bonds*. (1889) Section 130, Chapter IX, 133. Cites to *Sinks v. Reese* and *Clark v Robinson*.

⁹³ George Washington McCrary, *A Treatise on the American Law of Elections*, (1875), Sections 49-50, 42; Frederic Jesup Stimson, *The Law of Federal and State Constitutions of the United States: With an Historical Study of Their Principles, a Chronological Table of English Social Legislation, and a Comparative Digest of the Constitutions of the Forty-Six States*, (Boston Book Company, 1908), 227; William Mack, Howard Pervear Nash, *Cyclopedia of Law and Procedure*, (New York: American Law Book Company, 1905), 301. The *Summaries of State Laws Relating to the Insane* does not mention anything relating to voting, the only things that they talk about are committal for non-criminal and criminal insane. *Summaries of State Laws Relating to the Feeble-minded and the Epileptic* doesn’t have anything either. Or *Summary of State Laws Relating to the Dependent Classes*, 1913.

the court is in the process of reconstructing the deceased person's mental state. Also, the idea of enfeeblement based on age is built into the laxness of the will standard. If the McCrary standard was followed strictly, it would suggest that all of the men in disputed elections would prevail, as they were able to vote without assistance, and this act in and of itself indicates that they understood the nature of what they are doing. As the following shows though, that was not necessarily the view taken by courts.

Leroy Pitzer himself would not prove so lucky. By the time the court reached Pitzer's claim, nearly fifty witnesses had already testified. The newspapers gleefully anticipated Pitzer's arrival at court for the second-to-last day of testimony. The newspapers were so intent upon caricaturing Pitzer that they do not give us his words; he is a mute cipher for readers' amusement instead. Articles labeled him a simpleton⁹⁴ and an imbecile,⁹⁵ and reported that he "caused all sorts of amusement on the stand" as he insisted that he voted for the "dry" side and was not insane or idiotic.⁹⁶ His aunt, who was also subpoenaed, possibly tried to elicit sympathy for her nephew by describing him as physically disabled instead of mentally impaired. She testified that her nephew did not have a mental condition, but "was simply suffering from a

⁹⁴ "Courts," *Springfield Daily Gazette*, 8 April 1905, p. 4.

⁹⁵ "Testimony Taken: Arguments in South Charleston Contest Will Begin Tomorrow Morning," *The Daily Morning Sun*, 9 April 1905, 8.

⁹⁶ "Courts," *Springfield Daily Gazette*, 8 April 1905, 4.

prolonged attack of paralysis."⁹⁷ When Pitzer took the stand, though, when asked if he was paralyzed, "he began throwing both his members around in lively fashion and with such vehemence as to prove that he was not suffering from paralysis so far as his arms were concerned. He gave a like exhibition with his legs upon request."⁹⁸ The newspaper concluded that "after he had finished the consensus of opinion was that if he was suffering from paralysis the results were not at all apparent from the naked eye."⁹⁹ From the newspaper coverage, it is clear that Leroy Pitzer was not a respected member of the South Charleston community. Whether Pitzer suffered from a mental condition sufficient to render his vote invalid, however, was a more complicated legal question.

According to the 1851 Ohio Constitution, no "idiot or insane person" was allowed to vote.¹⁰⁰ The "wets" argued that Pitzer fell within the class of idiots or insane persons, without specifying which one. Though the Constitution limited suffrage based on mental disability, it did not provide any guidelines on how to determine whether someone actually was mentally disabled. Both sides provided medical doctors loyal to

⁹⁷ "Testimony Taken: Arguments in South Charleston Contest Will Begin Tomorrow Morning," *The Daily Morning Sun*, 9 April 1905, 8.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Ohio Constitution of 1851, Article 5, Section 6.

their respective sides who gave conflicting testimony as to Pitzer's mental state.¹⁰¹ In addition, they amassed a series of authorities to make their case.

Judge Geiger admitted in his opinion that the "[m]edical definitions and legal definitions on this subject seem not to be in exact accord."¹⁰² None provided an authoritative definition of "idiot" or "insane." While the *American and English Encyclopedia of Law* defined an idiot as "one who has no understanding from his nativity," *Bouvier's Law Dictionary and Concise Encyclopedia* unhelpfully distinguished between "imbecility" and "idiocy" and defined both as a "form of insanity" from either a cognitive or mental defect.¹⁰³ The same sources also gave conflicting definitions of "insanity." Ohio legislative acts contradicted themselves, as the Ohio Statutes defined insanity seven different ways in as many statutes.¹⁰⁴ When Geiger looked to Supreme Court of Ohio case precedent, in a criminal law case decided near the time of the enactment of the Constitution, *Clark v. State*, in 1846, the court noted that insanity "exists in all imaginable varieties and in such manner as to render futile any attempt to give a classification of its numerous grades and degrees that would be of much service,

¹⁰¹ Ohio Constitution of 1851, Article 5, Section 6. "Arguments are reached in the Beall Law Case," *Springfield Daily Gazette*, 10 April 1905, 1. The newspaper articles do not provide information on the testimony of the medical doctors, an interesting omission given the intense media attention for the case as a whole. Moreover, Judge Geiger does not discuss the medical testimony in detail in his opinion. Unfortunately, the case record was lost in a court house fire.

¹⁰² *In re South Charleston*, 23.

¹⁰³ *Ibid.*, 24.

¹⁰⁴ *Ibid.*, 25.

or under any circumstances safe to be relied upon; and much assistance can not be derived from metaphysical speculation.”¹⁰⁵ The case of *Farrer v. State*, another criminal law case, this time in 1854, was similarly unhelpful as a guide. The judge wrote, “I can not imagine her as other than idiotic or imbecile...It is enough to say that I think it proves her weak-minded and imbecile.”¹⁰⁶ In *Loeffner v. State*, the judge questioned the possibility of defining insanity in his murder case, writing: “insanity, indeed, exists in so many shapes and forms, and has so many varied insignia and manifestations, that it is almost impossible for science to comprehend it or give it intelligent definition...The classes, species, and modifications are not well understood by any of us, learned or otherwise. It seems, indeed, as indefinite in extent as mind itself.”¹⁰⁷ In the one Supreme Court of Ohio case that addressed the issue of insanity or idiocy as it related to elections, *Sinks v. Reese*, the court threw out the vote of a person who was determined to be an idiot, without “disclos[ing] the evidence upon which the court determined what constituted an idiot.”¹⁰⁸

In sum, Geiger cited twenty-nine separate definitions of “insanity” or “idiocy” as described in legal and medical treatises, encyclopedias, statutes, and cases. Despite this uncertainty, he concluded that it was “clearly appearing to the court that [Pitzer] comes

¹⁰⁵ *Ibid.*, 35, quoting *Clark v. State*, 12 Ohio 483, 488.

¹⁰⁶ *Ibid.*, 26, quoting *Farrer v. State*, 2 Ohio St. 54, 68.

¹⁰⁷ *Ibid.*, quoting *Loeffner v. State*, 10 Ohio St. 598, 604.

¹⁰⁸ *Ibid.*, 27-28.

well within the class of persons prohibited by the Constitution from voting, under the term 'idiot' or 'insane person,' as such terms are defined by medical and legal writers and decisions of Ohio courts, contemporaneous with the adoption of the Constitution of 1851." Geiger made this determination without clearly stating which one of the twenty-nine definitions he adopted.¹⁰⁹ Despite this impressionistic use of sources, the legal system invalidated Leroy Pitzer's vote.

Geiger claimed that it "can not be disputed that [Pitzer] is a person of diseased mind, of limited mental capacity, incapable of carrying on in an intelligent manner the ordinary affairs of life, having no distinct ideas upon the question of morality, right or wrong, and one who would probably not be responsible for any criminal act committed by him."¹¹⁰ Pitzer did not know "the value of money, or any definite conception of size or direction."¹¹¹ Geiger would "not hesitate a moment in adjudging him a proper person to be confined in an insane asylum were the matter brought before the court on an affidavit in lunacy; neither would there be any hesitation in appointing a guardian for him were a proper application made for the purpose, his mental condition being much more defective than in the majority of the cases where the court has been called upon to act in such matters."¹¹²

¹⁰⁹ *Ibid.*, 11.

¹¹⁰ *Ibid.*, 28.

¹¹¹ *Ibid.*

¹¹² *Ibid.*, 29.

After impugning Pitzer's mental status with a cascade of different types of legal standards upon which Pitzer could possibly fail, Geiger evidenced some hesitation when it came to the proof actually presented to him of Pitzer's mental deficiencies. The various definitions of mental deficiency that Geiger invoked involved performance at particular legal tasks. For instance, knowledge of right and wrong would align with mens rea requirements for criminal law. Yet, there is no indication Pitzer had difficulty performing the tasks involved with voting. Indeed, in an election that proved difficult for multiple voters, Pitzer did not have such difficulty, nor was his vote challenged at the election itself. Moreover, Geiger's opinion focused upon the legal authorities and did not discuss the testimony of the medical experts at trial. Contradicting the authorities he consulted, which suggested that idiocy originated at birth, Geiger notes that Pitzer "had the ordinary intellect of a child as he grew."¹¹³ When Pitzer was seven, "he was stricken by a sunstroke, the immediate result of which was paralysis, with all conditions attendant upon complete imbecility."¹¹⁴ Geiger does not, however, indicate how Pitzer's mental state had changed since childhood. It was clear, for example, that he was no longer paralyzed. Moreover, Geiger does not note in his opinion that in the 1880 census, 2 years after the sunstroke, Pitzer is listed under the heading "maimed, crippled, bedridden, or otherwise disabled" but not under "idiotic" or "insane."¹¹⁵ That

¹¹³ *Ibid.*, 30

¹¹⁴ *Ibid.*, 29

¹¹⁵ 1880 United States Census.

is, as Pitzer's aunt's testimony suggested, Pitzer may have had a physical impairment rather than, or along with, a mental one. While his aunt may have calculated that a physical disability would render Pitzer more sympathetic than a mental disability – like in the case of Warrington or Haughey -- her testimony also aligns with previous evidence of Pitzer's impairments.

Geiger also acknowledges that Pitzer “displayed in his examination considerable shrewdness in some of his answers,” suggesting that Pitzer did possess some mental acumen. Nonetheless, Geiger indicted Pitzer for “an absolute lack of knowledge of the proper way to mark his ballot, although he persisted in the statement that he voted “dry” at the election.”¹¹⁶ Significantly, he did not note that Pitzer *had* been capable of marking his ballot without assistance. Nor did he question why Pitzer's “obvious” incompetence was not challenged at the polling place.¹¹⁷

¹¹⁶ *In re South Charleston*, 29.

¹¹⁷ Notably, though state constitutional convention delegates confidently assumed that election officials would know lunatics when they saw them, and thus, did not include procedures for identifying people with mental disabilities at the poll, election challenges such as *In re South Charleston* indicate the failure of such a strategy. Disability scholars note the importance of visibility and representation to classification, discomfort about the “ugly,” “crippled,” or “maimed” body, and the fear of becoming disabled animating prejudice against disabled people. Here, while Pitzer is clearly identified as eccentric and lacking social respect, classifying him as mentally disabled was a more fraught process. See, e.g., Licia Carlson, *The Faces of Intellectual Disability: Philosophical Reflections* (Bloomington: Indiana University Press, 2010); Susan Schweik, *The Ugly Laws* (New York: NYU Press, 2010); Rose Galvin, “A Genealogy of the Disabled Identity in Relation to Work and Sexuality,” *Disability and Society* 21 (2006): 499–512; Thomson, *Staring*; Siebers, *Disability Theory*; Stoddard Holmes, *Fictions of Affliction*; Davis, *Bending over Backwards*; Adams, *Sideshow U.S.A.*; Hannah R. Joyner, *From Pity to Pride: Growing Up Deaf in the Old South* (Washington, D.C.: Gallaudet University Press, 2004); Halle Gayle Lewis, “‘Cripples are not the Dependents One is Led to Think’: Work and Disability in Industrializing Cleveland, 1861–1916,” Ph.D. Dissertation, State University of New York at Binghamton, 2004; Martha Stoddard Holmes, *Fictions of Affliction: Physical Disability in Victorian Culture* (Ann Arbor: University of Michigan Press, 2004); Deutsch,

If Geiger followed the same procedure for Pitzer as he had for the other claims, it is likely that the “dry” side would have prevailed by one vote – Leroy Pitzer’s. A functionalist, as opposed to formalist, interpretation of Pitzer’s predicament would have given Pitzer the benefit of the doubt for his vote, like with Warrington and Haughey, and would have not invalidated his vote absent clear evidence of fraud or misrepresentation. Instead, Geiger cited constitutional language to invalidate Pitzer’s vote, and rendered the election a tie.

Geiger followed a legal path that other judges had paved by noting the difficulties of determining idiocy or lunacy for the purposes of voting, yet nonetheless labeling certain people as idiots or lunatics without providing robust guidelines for their legal brethren to follow in understanding their decision. Courts had to grapple with idiotic and lunatic voters even without express voting prohibitions based on mental status.¹¹⁸

A number of cases from the late nineteenth and early twentieth centuries make this clear. In the 1878 Illinois Supreme Court case of *Clark v. Robinson*, E.E. Clark

H., “*Defects*”; Butler, *Mind and Body Spaces*; Corker, “Differences, Conflations and Foundations”; Corker, *Disability Discourse*; Mary Klages, *Woeful Afflictions: Disability and Sentimentality in Victorian America*. (Philadelphia: University of Pennsylvania Press, 1999); Davis, “Crips Strike Back”; Carol Thomas, *Female Forms: Experiencing and Understanding Disability* (Philadelphia: Open University Press, 1999);

¹¹⁸ “Want of mental capacity to comprehend the act of voting was sufficient at common law to debar from the exercise of suffrage idiots, lunatics, persons *non compos mentis*, and those under guardianship,[1 Bl. Comm. 303; Male on Elect. 165, 242; Heywood County Elect. 259; In re Contested Elections, 1 Brews. (Pa.) 104; Covode v Foster, 2 Bart. El. Cas. 600] and the constitutions of many of the states of the Union, in their provisions conferring the elective franchise, contain exceptions to this effect. [Stim. Amer. Stat. Law 251. It is competent to show that a person who voted was *non compos mentis*, and this without a finding in lunacy. In re Contested Elections, 1 Brews. (Pa.) 67.” 10 *American and English Encyclopedia of Law*, 608.

challenged the votes of Josh Edington, John Goodwin, Thomas Halbrook, Pont Elkin, and George W. Matthews for idiocy despite the silence of Illinois law on whether votes by idiotic or lunatic voters were invalid.¹¹⁹ Judge W.E. Adams turned to treatise writers to help answer the question of whether these men were allowed to vote. In his *Constitutional Limitations*, Thomas Cooley observed that while “[in] some states, idiots and lunatics are expressly excluded,” idiots, and lunatics, along with “women, minors, and aliens” were also disfranchised through common law, “even though not prohibited therefrom by any express constitutional or statutory provisions.”¹²⁰

The common law, then, allowed Judge Adams to prohibit the votes of the five men; he did not believe, though, that the evidence presented warranted such a conclusion. Judge Adams noted that Thomas Halbrook was “a good farm hand at farm work...that he needs no instruction about his work, does the same work and receives the same pay as other hands, knows money and its value, makes his own contracts, does his own trading and takes care of his own money, reads, converses freely, talks and laughs like other men...”¹²¹ Factored against him was medical testimony, as well as his speech, which was affected by disease. Three medical experts declared Halbrook an idiot. According to a medical jurisprudence treatise, idiots could “manifest capacity to

¹¹⁹ Clark v Robinson, 501

¹²⁰ Cooley, *Constitutional Limitations*, 599, quoted in the case on p 501-02.

¹²¹ Clark v Robinson, 502

receive instruction although in a low degree.”¹²² Judge Adams concluded though, that this medical expertise conflicted with the legal understanding of idiocy, which had a much lower floor. Quoting Blackstone, he defined an idiot as a “natural fool, is one that hath had no understanding from his nativity, and therefore is, by law, presumed never likely to attain any.”¹²³ A person was not an idiot “if he have any glimmering of reason, so that he can tell his parents, his age, or the like common matters.”¹²⁴

The situation was similar with respect to Josh Edington, John Goodwin, and George W. Matthews. While medical testimony was against them, they had proved capable of certain practical affairs. With Matthews, for instance, Judge Adams noted that “[t]he evidence shows that for some years Matthews has, at times, labored under some kind of illusion or hallucination, but not to such an extent as to incapacitate him from the general management of his business.”¹²⁵ As for Edington and Goodwin, witnesses testified to “peculiarities and eccentricities indicative of mental deficiency to some extent, but we can not think persons possessing the degree of understanding which these are shown to have had, are, on the account of mental incapacity, to be denied the privilege of the exercise of the elective franchise.”¹²⁶ Judge Adams also discounted the medical testimony against Pont Elkin. The doctor who testified against

¹²² Ibid.

¹²³ 1 Blackstone Commentaries, 302-03, quoted in Clark v Robinson, 501

¹²⁴ Ibid.

¹²⁵ Clark v Robinson, 503.

¹²⁶ Ibid.

Elkin believed that Elkin was *non compos mentis*, but also did not declare him insane, characterizing him as a “man vacillating, easily persuaded to do anything.”¹²⁷

Lewis Hill and George Parsley in the *Edwards v. Logan* case, were both denied the franchise for idiocy and lunacy, respectively, while A.S. Parsley and Wesley Parsley were allowed to vote. It may have been difficult for the election inspectors to make a proper assessment of the mental status of voters, though, as they were drunk on the whiskey they brought into the voting room. Here, the court was willing to separate out idiocy and insanity. The court defined an idiot as “one who is destitute of mind, and has been since his birth.”¹²⁸ A lunatic “did not have mind sufficient to know or to comprehend his act, or will power to control it.”¹²⁹ Lewis Hill was adjudged to be an idiot in March of 1895 and again in December of 1901. His mother had crazy spells. He was declared “an idiot from birth and did not have sufficient mind to intelligently care for himself.”¹³⁰ At the time of the disputed election, Hill was under the guardianship of Warren Crumpton. James M. Webb, the constable, saw George Parsley the day of the election and said that he was “bordering on insanity very strong I thought.”¹³¹ Parsley asked Webb “where Asa Houchin was. He said he had gave him \$5.00 to vote the Republican ticket and that the Democrats had hid him, he came to me that morning and

¹²⁷ Ibid., 502.

¹²⁸ Edwards Court Records, KDLA

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

said for me to keep Pace Sanders off of him as they had trouble a good while ago.”¹³²

George was discharged from the lunatic asylum in 1901 at the same time as A.S. Parsley. Both of them voted in the November 1901 election. The very next day, however, George was adjudged to be a lunatic. George was violent towards others and had to be tied up. A.S. Parsley was also violent towards others and exhibited “general derangement.” His lunatic assessment noted a “lick on head with hammer some thirty years ago and was sent to the Western asylum about 25 years since.”¹³³

Smith Parsley and Wes Parsley also had bad minds, according to Asa Houchin. G.W. Lindsey, one of the election inspectors, saw Wes Parsley vote and did not think there was anything wrong with his mind. However, John Johnson, the Edmonson County Court Judge, testified that George Parsley’s lunatic assessment noted that his mother, brother, and son were all insane. Wes Parsley, George’s son, was paroled from the lunatic asylum in Lakeland four years prior to the election. He also voted at the election. His last attack had been a week before he was adjudged a lunatic, and his behavior had been getting increasingly worse. Wes, who was 18, ran “about,” and threatened other people. His lunacy was considered hereditary. Joe Henry Meredith saw Wes and Smith Parsley the day of the election and their minds were “all right as far as I know.”¹³⁴ Asa Blanton testified that Wes Parsley’s mind “was very good” the day of the election.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

The court concluded that “[t]he weight of evidence shows that A.S. Parsley and Wesley Parsley also had mind sufficient to comprehend the act of voting; both had been adjudged lunatics and had been in the asylum for the insane, but both had been discharged therefrom and had been at their homes in this county for three or four years. They cast their ballots without aid from the officers of the election and Wesley Parsley gave his deposition in this case and his answers to questions seem to have been promptly and intelligently made.”¹³⁵ By a preponderance of the evidence, Parsley and Hill were found to be a lunatic and idiot, respectively. Parsley was adjudged a lunatic the next day and Hill was “an adjudged idiot at the time he voted and had been for many years a state charge.”¹³⁶ No other explanation was given for treating the men differently as to their mental status.

The Illinois Supreme Court had to grapple again with idiotic and insane voters in 1891, in the case of *Behrensmeyer v. Kreitz*. John Weisenberger was adjudged a lunatic twelve years prior to the election.¹³⁷ The lower court refused to enter this information into evidence against Weisenberger.¹³⁸ The Illinois Supreme Court, following *Clark*, and treatise writers Thomas Cooley and George Washington McCrary, premised that “a lunatic or distracted person is not a qualified voter, and that his vote may be rejected

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Behrensmeyer v. Kreitz*, 52 Ill. App. (Ill. Supp. Ct. 1893), 638.

¹³⁸ *Ibid.*, 637-38.

upon a contest.”¹³⁹ There was not enough proof to deny Weisenberger’s vote, however, as the court ruled that no testimony attesting to his insanity at the *time* of the election was introduced. Without it, “the preemption must be that he was of sound mind.”¹⁴⁰

Such a decision would have worked in Leroy Pitzer’s favor. In light of the unevenness of the rule and the application of law, it is worth returning to the *Wickham* case, in which the court had to filter through the 172 votes cast by the Delaware county infirmary inmates. Rather than throw out the election, the *Wickham* court made fine distinctions among the inmates. Eventually, they found two inmates, William Palmer and C.W. Shotboldt, were insane and thus disqualified from voting while the other infirmary inmates received appropriate assistance for their maladies.¹⁴¹ The court did not provide a rationale for this decision or offer additional evidence for the uncertain terrain.

Judges had to make crucial all-or-nothing distinctions based on conflicting evidence of mental status. Their determinations on idiocy showed that they were willing to deny a definition of idiocy, despite medical testimony, if the men in question were able to work. For lunacy, testimony from lay people was crucial, along with evidence of commitment. Confusion at the ballot box, however, does not seem to be a determinative factor, although one would think that it would be the most important

¹³⁹ *Ibid.*, 637.

¹⁴⁰ *Ibid.*

¹⁴¹ *Wickham v Coyner*, 20

factor of determining someone's mental state in regards to voting. The cases illustrate that voting was a highly contingent right, based on community norms and commonsense decisionmaking, rather than a highly scientific or precise medical differentiations.

Remedies

When it came to a remedy, though Geiger believed Pitzer a lunatic or idiot, he was willing to take Pitzer's word regarding which candidate he voted for. In general, the era of the secret ballot made it much more difficult for courts to design adequate remedies for invalids if a lunatic or idiot voted. Not all judges were as trusting as Geiger. While the *Wickham* court was able to conclude that Palmer voted for Coyner, they were unable to decide which candidate the lunatic Shotboldt voted for.¹⁴² The *Edwards* Court did not have the ballots of Lewis Hill and George Parsley in evidence. Hill said that he voted the straight ticket, including for Edwards. Another witness, though, testified that Hill's descriptions of how he voted would result in a vote for the other party. Furthermore, the court stated "[m]anifestly, the statements of this idiot should not have been received, or, if received at all, the result is that each cancels the other. What a voter may say after the election, and after he has voted, as to how he voted, is at best but hearsay. An idiot, of course, is one who is destitute of mind, and

¹⁴² Ibid.

has been since his birth. Such a person would not be competent as a witness.”¹⁴³ As for Parsley, similar problems arose. The court noted that “if he was insane, and so insane as to be classed as a lunatic – that is, did not have mind sufficient to know or to comprehend his act, or will power to control it, – it is probable that he voted against as for his party affiliation; at least there is no reasonable probability that could be ascribed to his secret conduct when in such deranged condition because of his judgment and opinions entertained when in a rational and sane state of mind.”¹⁴⁴ After all, the court added: “We know as a matter of fact that lunatics frequently, if not generally, do exactly the contrary, while insane, to what they would have done when of sound mind.”¹⁴⁵ Accordingly, the court did not deduct their votes from either candidate and the vote total was not affected.

When Geiger gave his decision, he read out his ruling for nearly an hour as the newspaper reporters and spectators listened and took notes.¹⁴⁶ Though all the local newspapers attributed the tie vote to Leroy Pitzer’s invalid vote, they were not unanimous on his final mental status, variously calling him a “person of diseased

¹⁴³ Edwards v Logan, 327

¹⁴⁴ Ibid., 328.

¹⁴⁵ Ibid., 328.

¹⁴⁶ “Election Decided for Wets: Judge Geiger Holds Charleston Election Illegal Because Imbecile Voted,” *The Press-Republic*, 27 April 1905, 2.

mind,"¹⁴⁷ an "imbecile,"¹⁴⁸ an "idiot,"¹⁴⁹ and "insane."¹⁵⁰ John Brown, a spokesperson for the "drys," was quoted that while the "drys" were disappointed, the "wets" were celebrating. Nevertheless, he observed, "we are taking it philosophically, for we knew it was only a question of legality which we must submit to...We hold no grudge in the matter, but we feel certain of a final victory."¹⁵¹

South Charleston reran its election, and John Brown got his wish for prohibition fulfilled nationally fourteen years later. Fourteen years after that, of course, the other side prevailed as Prohibition was repealed. Pitzer did not live to see that happen. He was committed to the Columbus State Hospital for the Insane in 1907 and died in the Dayton State Hospital in 1912. On Pitzer's order of lunacy and commitment, the same Judge Geiger noted his condition as "weak mindedness" caused by "intermarriage among his ancestors and childhood illness."

The story of Pitzer and other allegedly disabled men who attempted to vote illustrates the thinness of citizenship as it relates to voting. We know how the two were

¹⁴⁷ "Set Aside: South Charleston Election Declared Invalid - The Vote of Leroy Pitzer - Hold Illegal and Deducted from Drys Renders Result a Tie - Was of Diseased Mind - Interesting Points of Law Governing the Case. Apply to Reopen the Case," *The Daily Morning Sun*, 27 April 1905, 1.

¹⁴⁸ "Election Decided for Wets: Judge Geiger Holds Charleston Election Illegal Because Imbecile Voted," *The Press-Republic*, 27 April 1905, 2.

¹⁴⁹ "Single Point Decides Beall Case for Wets: On All Essential Points Probate Judge Geiger is with the Drys in So. Charleston Matter - Motion is Made for a Re-hearing," *Springfield Daily Gazette*, 26 April 1905, 1.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

decoupled with respect to gender, in *Minor v. Happersett*, and in relation to race, with the erosion of the protections of the 15th Amendment. Now we can add in how citizenship was separated from voting rights with respect to disability. This was not the case with all disabilities, as people with physical disabilities and people enfeebled by age were able to receive the assistance necessary to facilitate their right to vote, while lunatics and idiots were denied and disfranchised. This decoupling of voting and citizenship with respect to disability began with the first prohibition against lunatics and idiots voting in 1819, in Maine, but the process accelerated in the postbellum era in the age of more complicated voting procedures that ensnared more people in vote challenges. Delving into these low-level court cases allows us to excavate the stories that might have otherwise disappeared into the historical record.

These cases also show a decided unwillingness by judges to arrive at considered and systematic reasons for their disfranchising decisions. While Haney-Lopez and Gross argue with respect to racial classification cases that the calling into question of race forced the legal system to come up with a taxonomy for their decisions, here, the court system largely threw up its hands in terms of describing a systematic rationale – yet proceeded anyway to disfranchise lunatics and idiots. These cases show the true potency of common sense legal decision-making, as the legal system in the exercise of its power does not have to explain its reasoning.

In the end, Pitzer collected a series of descriptions for his mental behavior, from imbecile, to idiot, to lunatic, with a similarly long list of causes for his condition, from

childhood illness to eugenic factors. These various approaches to mental conditions crystallized in the law because of political maneuvering that, at first glance, had little to do with disability. Long after the death of Pitzer himself, *In re South Charleston* survives as still-binding law invalidating the right of people with mental disabilities to vote in Ohio.

EPILOGUE

It is unlikely that Stephen Lopate has ever heard of Leroy Pitzer or *In re South Charleston Election Contest*. An avid political watcher and person with severe autism, he told his mother of his preference for Hillary Clinton during the 2008 election. His mother has limited conservatorship over him for his medical and financial affairs. When Lopate's mother attended a self-help clinic, she told the attorney designated to help Lopate that he was unable to fill out a voter registration form by himself. The attorney then told a judge that Lopate should be stripped of the right to vote. Lopate lives in California, which prohibits people judged "mentally incompetent" from voting. According to Lopate's mother, "[h]is attorney told me that it would be inconsistent with the concept of conservatorship for Stephen to have the right to vote." Lopate was also disappointed, saying "[t]he boy got angry....Really against the law."¹

During the 19th and early 20th centuries, the story would probably end there with Lopate's disappointment. Unfortunate, but uncontested. Lopate's story is in many ways similar to the episodes that took place in this dissertation. Local people designated themselves as gatekeepers to the vote despite the absence of any law granting them that power. Their determination was based upon a "common sense" legal understanding of

¹ Stephen Ceasar, "Disabled L.A. man's desire to vote leads to probe of alleged state violations." *Los Angeles Times* (May 22, 2015).

disability that was uninformed of medical standards or expertise. Election administrative procedures were roadblocks to voting. A family member worked to aid Lopate in his effort to vote. He was self-motivated to vote even though he would face criticism and possibly ridicule.

Other people have faced similar experiences of disenfranchisement based on arbitrary considerations of “common sense” by self-appointed gatekeepers. When residents of a New Jersey psychiatric hospital attempted to vote, election officials segregated their ballots and refused to count them unless the residents could prove their competency. In Virginia, election officials refused to give absentee ballots to psychiatric hospital residents. Arkansas election officials gave group home residents who had developmental disabilities a test before they were allowed to vote. Staff in a California Department of Veterans’ Affairs home did not allow volunteers to register or provide election information to residents because the residents were “too demented to vote.” Though Pennsylvania does not have any prohibitions based on mental status on the books, a study of Philadelphia nursing homes found that often residents were prohibited from voting based on staff determinations about their competency. The efforts to restrict voting based on mental status extended beyond local and state officials to national political parties. In 2004, the Republican Party recruited volunteers who

were “taught how to challenge mentally disabled voters who are assisted by anyone other than their legal guardians.” Mental disability remains a target for voter disenfranchisement.¹

What has changed is that these practices have not gone without challenge. No longer is it just the losers of elections that raise election issues that involve people with mental disabilities. Now people accused of having mental disabilities, as individuals and with the support of advocacy groups, are fighting their disenfranchisement in courts and the legislature. Their challenges have produced singular victories and successes on the state level. The 2001 *Doe v. Rowe* case in Maine struck down the state constitutional language that disenfranchised people with guardianships. In 2007, New Jersey voters voted to remove the language about idiots and insane persons from the state constitution and replaced it with “no person shall have the right of suffrage who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting.” Iowa Public Measure D, otherwise known as the “Idiot Amendment” changed the constitution from prohibiting someone from voting if she is an “idiot or insane” to “a person adjudged mentally incompetent.”²

¹ Bazelon Center for Mental Health Law & National Disability Rights Network, *Vote. It's Your Right: A Guide to the Voting Rights of People with Mental Disabilities*. available at <http://www.disabilityrightsca.org/pubs/Bazelon-Voter-Guide.pdf> Though Pennsylvania does not have any prohibitions based on mental status on the books, a study of Philadelphia nursing homes found that often residents were prohibited from voting based on staff determinations about their competency. Michael Moss, “Big G.O.P. Bid to Challenge Voters in Key State,” *New York Times*, October 23, 2004, A1, A12.

² *Doe v. Rowe*, 156 F. Supp. 2d 35 (D. Maine 2001). Michael R. Blood, *People with Disabilities Denied Voting Rights, Group Says*. July 10, 2014. Available at

Surveying the national landscape, however, the view is discouraging. What is still true is the arbitrary and discriminatory nature of enforcement. The majority of states still disenfranchise people based on their mental status and thus continue to allow this type of enforcement. Although many of them have updated their language from the idiocy and insanity terminology prevalent in the 19th century, such as New Jersey, the prohibitions against voting remain.

The post-*Bush v. Gore* era has ushered in more concern about voting and increased recognition that the disenfranchisement of even a small group of people could have considerable consequences for election results. Advocates have argued that the federal landscape has changed both constitutionally and statutorily, in that people with mental disabilities may vote, but legislatures and courts have been slow to agree. In particular, scholars and activists have highlighted possible election obstacles for older and physically disabled voters. Like in previous chapters, these voters are not always treated as voters with mental disabilities, yet they do have overlapping concerns. Federal statutory protections are better at addressing mobility issues and physical disabilities than mental ones. The Voting Rights Act allows people who are blind or who have other disabilities to receive assistance in voting. The Voting Accessibility for the Elderly and Handicapped Act of 1984 also allows assistance, and also grants the right to vote in federal elections. This right, though, is narrowly construed because

<http://www.pbs.org/newshour/rundown/disabled-people-denied-voting-rights-group-says/>. N.J. Constitution, article 2, section 1, para. 6. Tiffany Sharples, "Ballot Initiatives: No to Gay Marriage, Anti-Abortion Measures." *Time* November 5, 2008 available at <http://content.time.com/time/politics/article/0,8599,1856820-1,00.html>

“disability” is defined only as “temporary or permanent physical disability” and does not include mental disability. Title II of the Americans with Disabilities Act requires modifications in public accommodations, yet this has also been construed narrowly to only cover accessibility issues for people with physical disabilities. Finally, the National Voter Registration Act requires accommodation for people with disabilities, yet explicitly excludes people for reasons of “criminal conviction and mental incapacity.”

Despite these drawbacks, advocates continue to push forward. For Stephen Lopate, this meant assistance from an attorney with the Disability and Abuse Project of the Spectrum Institute. His new lawyer was able to change the minds of both the original attorney and the judge, which led to restoring Lopate’s vote. Beyond Lopate’s individual circumstance, the Disability and Abuse Project of the Spectrum Institute filed a federal complaint against the Los Angeles Superior Court, the court charged with enfranchising people under limited conservatorships, or guardianships. Over 10,000 people are under limited conservatorship in Los Angeles County, out of 40,000 people statewide. The complaint alleges that despite a Voting Rights Act prohibition against literacy tests, the court commonly requires one. Also, contrary to the Americans with Disabilities Act, court-appointed lawyers are told they cannot assist their clients in understanding the ballot. As a result of these types of impediments, the Spectrum Institute found that 90% of people under limited conservatorship are disenfranchised. In response, the Department of Justice is investigating California voting rights practices for people with disabilities. Thomas Coleman, the Disability and Abuse Project director,

argues that “[i]f somebody can articulate in whatever way...that they want to vote, that they have an interest in voting, that’s the only test that should be applied nationwide.” The same position was adopted by the American Bar Association in 2007.³

Though Lopate regained the right to vote, his incident has energized him as an advocate. He wants to work to ensure that other people are able to vote: “The mom made sure they did not take my rights away from me. I am the lucky young man.”⁴

³ “Disabled L.A. man’s desire to vote” *Los Angeles Times*. Andy Jones, Rooted in Rights Report: DOJ Investigating California Voting System. June 9, 2015. Available at <http://www.rootedinrights.org/doj-investigating-california-voting-system/> Michael R. Blood, People with Disabilities Denied Voting Rights, Group Says. July 10, 2014. Available at <http://www.pbs.org/newshour/rundown/disabled-people-denied-voting-rights-group-says/>

⁴ “Disabled L.A. man’s desire to vote” *Los Angeles Times*

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