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UNDOING ABLEISM: DISABILITY AS A CATEGORY OF HISTORICAL AND LEGAL ANALYSIS

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KEYWORDS

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Undoing Ableism: Disability as a Category of Historical and Legal Analysis

_Abstract

In this essay, I will apply disability as a category of legal and historical analysis to undo the different forms ableism can take in US history and law. My aim is to look at a specific time period in US history – the turn from the nineteenth to the twentieth century – in order to elucidate narratives of exclusion and marginalization of disabled people on the one hand and resistance and resilience on the other. My claim is that in this period, disability gains particular political and legal relevance as an intersectional, i.e. a gendered, classed, and racialized category of analysis, which leads to the cross-connection between ableism and other dominant ideologies, such as sexism, racism, and classism.

In order to give my analysis historical and cultural specificity, I will look at two distinct historical and legal contexts. In the first part of this essay, I discuss the interrelation of ableism and classism in the context of the industrialization and the subsequent socioeconomic discrimination of disabled factory workers. As a legal subtext, the fellow servant rule will be discussed to understand how this particular law becomes relevant for disability politics.

In the second part of the essay, ableism is explored in the context of racism to understand how atavism and biological determinism contributed to the othering of disabled people, especially disabled women, in the context of eugenic ideology of the early twentieth century. Here I will discuss the US Supreme Court decision for the case *Buck v. Bell* in order to understand eugenic law as a reflection of an ideology that is both ableist and sexist at its core.

> "Disability is everywhere in history, once you begin looking for it, but conspicuously absent in the histories we write."[1]

There is a fundamental contradiction at the heart of disability politics. While Anglophone disability studies argue for the inherent politicity of disability as a legal and political issue, disability as a category of analysis remains largely absent from historical, political, and legal discourse.[2] To make matters even more complex, 'disability' has more than one meaning. There is the medical model of disability, which understands disability as functional impairment and makes visible the ways in which a body does not function in the way it is expected to.[3] This results in activity limitations (i.e. restricting a person's ability to do certain activities such as seeing, walking, hearing, and problem solving) and participation restrictions, which excludes a disabled person from daily activities, such as working and social activities.[4] On the other hand, there is the social model of disability, which puts disability in a broader context of societal and

environmental factors and views impairment as the result of physical and social barriers. In other words, people are not disabled by their diagnoses, but by a society that equates disability with deficit. Therefore, impairment is inherently and irrefutably negative in the eyes of the dominant ableist ideology.[5]

In historical and legal discourse, the conceptual distinction between the social and the medical model of disability proves to be even more complex. As disability scholar Douglas C. Baynton points out, historicizing disability means recognizing the political dimension of disability as a complex and intersectional category of historical analysis, one in which the medical and medicalized beliefs about the 'disabled' body have an immediate political dimension. In Baynton's view, 'disability' has been used extensively to justify racist and sexist discrimination against people who are disabled and people who are not disabled but are perceived to be because they are thought to be 'inferior.'[6] One example that comes to mind is the systemic degradation and dehumanization of African American slaves as cognitively impaired, which served as one of the ideological legitimizations for slavery.[7] Here, the boundary between the medical and the social models blurs. Disability denotes not only a form of impairment attributed to a specific group of people in order to degrade them, but it also characterizes a specific way of thinking about bodies, appearance, and normalcy. To apply disability as a category of analysis thus means to pay attention to the ways in which the boundary between the medical and the social model of disability turns into an intersection of specific ideologies that view non-normative bodies as 'inferior,' such as ableism, racism, and sexism. As disability turns into deficit, ableism becomes hegemonic: the belief that disabled people need 'fixing' in order to function turns into the ideological basis that equates disability with deficit.[8] Consequently, disability as a category of analysis cannot be ignored as these forms of exclusion cannot be unseen, yet historical analysis outside of disability studies often remains quiet on disability as a category of analysis, reducing it to "personal tragedy."[9]

My aim is to counter this absence and the silence it implies. In this essay, I apply disability as a category of historical and legal analysis to elucidate narratives of exclusion and marginalization on the one hand and resistance and resilience on the other. Rather than giving a diachronic overview of disability history in its entirety, however, my focus for this essay lies on a specific time period: the turn from the nineteenth to the twentieth century in the US. In this period, disability as a category of analysis gains

particular political and legal relevance as an intersectional, i.e. a gendered, classed, and racialized category of analysis. To tease out these interconnections, this essay is divided into two parts. First, I discuss the interrelation of classism and ableism during industrialization. Here, I explore how disability and social class figure in the marginalization of disabled factory workers and how the common law system, in particular the fellow servant rule, supports systemic modes of discrimination. In the second part of this essay, I then move to the intersection of ableism and racism and discuss eugenic ideology in the context of biological determinism and atavism. As a legal case, the Supreme Court decision *Buck v. Bell* will be discussed in depth to make visible the gendering of disabled and poor women in the nineteenth and early twentieth century in the US.

Starting in 1780 in Britain and spreading to "other areas of Europe, the United States and Japan in the second half of the nineteenth century," the Industrial Revolution marks one of the major disruptions of that period.[10] Following an increase in industrialized factory work, urbanization with large improvements in infrastructure and a "demand to fill factories,"[11] the concept of work underwent fundamental changes as labor became increasingly commodified.[12] Working hours increased up to sixteen hours per day in factories in 1850, while working conditions decreased in quality, leaving workers to shoulder long hours in mass production without access to fresh air, exercise, healthy food or basic medical supervision and care.[13] As a consequence, it was not simply labor that became industrialized as factories were built. Rather, as Frederic Jameson argues in *The Political Unconscious*, it is an entire value system that is being replaced: the transgression from the *ancien régime* to "capitalist market society" is marked by "new conceptualities, habits and life forms" and one of these values is the ability to work, commodified and hegemonized as able-bodiedness.[14]

The disability politics implied in this paradigm shift become apparent when considering the transition from agricultural to industrialized forms of production that produced and politicized forms of dis-ability and dis-ablement. As disability scholars Michael Oliver and Colin Barnes point out, in an agricultural economy reminiscent of the *ancien régime,* the emphasis on "traditional craft skills" as well as "community ties" resulted in a participatory and inclusive work environment as far as disabled people were concerned.[15] In fact, disabled people were en-abled by the modes of feudal production "in which neither labor nor its products are commodities": being disabled and

being productive as a body that (literally) works was not perceived as mutually exclusive.[16] With labor being integrated in a seemingly "natural"[17] – or as I would argue, naturalized – economy, "a relatively intimate union between domesticity and labor" opened up: disabled family members were given tasks in the household "to keep it fed and warm"; they "contributed what they could."[18] This illustrates the historical and cultural specificity of disability as a category of analysis: in systems of agricultural production, disability was not associated with forms of intrinsic deficit as it was during industrialization.

Another example of the cultural specificity of disability in pre-industrialized times is the advent of early US Deaf culture among deaf settlers on Martha's Vineyard.[19] In the community, a specific form of sign language – Martha's Vineyard Sign Language (MVSL) – was established as the community's official language next to spoken US American English to account for the fact that the majority of settlers were deaf and native signers.[20] To be fair, one could argue that the establishment of MVSL is the outcome of an evolutionary process. Deafness was caused by a gene defect which spread in the community, thus learning sign language seemed the logical consequence in order to facilitate communication among settlers.[21] However, returning to the politics of disability, I want to point out that the relation between MVSL and Spoken English is inherently political: it subverts deafness's status as 'other' and challenges the phonocentric and audist hegemony of verbal language as the ideologically dominant and normalized form of communication.[22] Returning to Jameson, in a community reminiscent of the *ancien régime,* a moment of "cultural revolution" was thus already present, which turns the hegemonic power relation between disability and able-bodiedness on its head through sign language as a signifier of Deaf cultural resistance against phonocentrism and audism. In other words, on Martha's Vineyard, those who did not know MVSL were the ones impaired, while the formerly "hearing-impaired" entered a position of power marked by the ability to communicate and to be understood.[23] This then puts another spin on disability as a category of analysis and the politics implied in the historicization of disability. There is a conceptual and ideological tie between the construction of impairment and modes of social exclusion, which is a point I shall come back to later in this essay.

Turning to capitalist wage labor, this relation changes fundamentally. It is important to note that capitalist work and labor in this context are not just opposites of the work

that was done in pre-industrial times. Instead, work emerges as another central category of analysis, one that politicizes disability in the context of social exclusion, socioeconomic disadvantage, and legal discrimination. As the commodification and commercialization "of land and agriculture" increased, a call was made for a "new category of worker", able to face and shoulder the long hours in mass production. [24] In this context, commodified modes of production renegotiate the power relation between disability and able-bodiedness. And while Foucault characterizes the factory as a place that disciplines workers into normalcy as a form of able-bodiedness,[25] I would argue that the hegemonization of able-bodiedness works the other way around, through the systemic othering and classing of disability as fundamental and intrinsic deficit.

To give an example: During the process of industrialization, working-class families were, as Lennard J. Davis puts it, "redistributed into the factory orbit,"[26] segregated into neighborhoods that made it more likely for people to become disabled through poor hygiene and a lack of basic medical care.[27] With factory workers being at substantial risk for physical disabilities such as spinal deformities due to the high workload and poor maintenance in factories both in Europe and in the US, the capitalist value assigned to being disabled was inherently negative.[28] Becoming disabled resulted in losing one's skills as a worker, and turning from a working-class, disabled person into a poor, disabled person, meant an increase in societal stigma, as 'pauperism' was ostracized both in the US and in Victorian England.[29] As a consequence, disability as a category of analysis becomes political. The disabled, working-class body signifies difference intersectionally on more than one level. The power relation between disability and able-bodiedness is now characterized both by Marxist politics of owning capital[30] and disability politics of having access to that capital. Those who have no or limited access "to economic, social, and cultural resources" are thus disabled by the system at hand.[31] Consequently, the hegemony at the heart of able-bodiedness emerges as twofold. On the one hand, it is capitalist because it is produced through and constructed by capitalism as an "abstract concept" and on the other hand, it is ableist, because hegemonic able-bodiedness perpetuates the belief that bodies need to be able-bodied to work, which puts those ill-equipped to function in the system in capitalist limbo.[32]

This mode of othering disability through ableist and capitalist dominance is reinforced by nineteenth-century common law that regulated factory work and normalized able-bodiedness through the figure of the "self-made American man."[33] Following

Rosemarie Garland-Thompson's argument, the concept of work is political, because it carries a specific cultural connotation in the US historical context. "The abstract principles of self-government, self-determination, autonomy, and progress" all feed into ideologically dominant narratives such as the American Dream, which makes the othering of disability through common law complex, as more than one hegemony – and more than one form of othering – is involved.[34] What is also important to consider in this context is, as Lawrence M. Friedman argues, that there is no such thing as 'the law.' Instead, there is a difference between "the law itself, structures and rules" and the social and legal forces that, in some way, "press and make the law."[35] This observation has led to the denaturalization of law as narrative.[36]

Subsequently, a contextualized understanding of legal rule as "narratively based and culturally embedded" emerges, which politicizes the relation between law and disability.[37] When unpacking the ways in which disability becomes 'other,' looking at the power relation between disability and able-bodiedness is not enough. One also needs to look at the power relations that the law is immersed in, as legal narratives and institutions negotiate the legal and political relationship between disability as a category of difference and law as mode of reading difference. On the one hand, the law-and-narrative paradigm argues that law is composed of a set of narratives that "situate, explain, and legitimize their prerogative."[38] Yet on the other hand, these narratives also reflect on the ways in which law is bound up with the making of norms through institutions, which turn law into a narrative of institutionalized norms and power.[39]

When looking at the legislative make-up of the American "self-made man" and the US Supreme Court decisions involved in the making of this man, the fellow servant rule from 1842 is a telling example, as it illustrates how legal narrative serves as a tool to marginalize, oppress, and class disabled people.[40] One Supreme Court decision that plays an important role in making this law ideologically dominant is the ruling in the case *Osborne v. Morgan et al.* In this case, John Osborne, a carpenter working in a factory in Worchester, was injured by an iron block that had fallen on him. Because the block had been put on an iron rail by his fellow workers (or "servants"), violating safety precautions, Osborne decided to take the company to court. The Supreme Court of Massachusetts dismissed the case, justifying its decision as follows:

> The master's rights of action against the defendants would be founded upon his contract with them, and his damages would be for the injury to his property, and

> could not include the injury to the person of this plaintiff, because the master could not be made liable for him for such an injury resulting from the fault of fellow-servants, unless the master had himself been guilty of negligence in selecting or employing them.[41]

In this legal narrative, a specific politics is sewn into the rhetorical fabric: the power relation between "master" and "fellow servant" and its connection to disability and able-bodiedness. In the paragraph cited above, both are understood to be "autonomous agents entering freely into a contract" and that notion of "contractarian economic individualism"[42] makes it impossible for workers "to sue their employers for damages if a coworker was responsible for the injury."[43] And while one could argue that the fellow servant rule is but one example how "[the legal system] promote[s] economic growth," it is important to consider this law in a disability-related context to understand its implications as a narrative that excludes disabled people and other people's assumed disability.[44]

In light of the fact that factory workers were already marginalized because of their fragile socioeconomic position, those who had been injured at work and became disabled were put in a position of even more severe financial precariousness. They became dependent on "charity or poor relief" and were further marginalized as poor and disabled in society.[45] Consequently, *Osborne v. Morgan* gives legislative and ideological form to the "belief in the link between 'hard work' and economic and societal success;" a belief that is also at the core of exceptionalist narratives such as the American Dream and the "self-made" American man.[46] Able-bodiedness is thus imagined as the body of a 'self-made' all-American worker while the intersection of social class, poverty, and common law transmogrifies disability into a capitalist nightmare, a form of 'personal tragedy' that results in severe socioeconomic disadvantage.

In the context of industrialized expansion and US colonialism another grim historical and legal subtext evolves that denaturalizes and exposes the image of the quintessential 'self-made' and 'self-governing' American man as ableist and racist:[47] 'The 1830 Indian Removal Act' passed by Andrew Jackson in 1830.[48] To justify the passage of the Act and the subsequent genocide of Native Americans, Jackson delivered his 'State of the Union' speech in which he contrasted the image of a progressive, industrialized US nation, "our extensive Republic, studded with cities, towns, and prosperous farms," with the racialized picture of Native Americans as "savages."[49] What is

important to note here is that the stereotype of the noble savage who "liv[es] comfortably with nature" and in "close harmony with their local environment"[50] has been instrumental not only in the othering of Native Americans,[51] but also of cognitively disabled people.[52] A complex intersection between disability and race unfolds in which racist able-bodiedness and ableist racism emerges, pushing those who do not conform to the hegemonic ideal of the 'self-made American man' to the margins. The 'Indian Removal Act' creates a narrative of marginalization, a complex narrative of social exclusion that oppresses those perceived to be 'different' and feeds into pre-existing nationalist, racist, and ableist ideologies of the nineteenth century.

This intersection between legal narratives of exclusion, racism, and ableism is made more complex when taking into account the concept of legal personhood. As Barbara Young-Welke points out, one of the ways to be 'other' in law is through a form of "imagined legal personhood" that racializes and genders legal rights and frames them as belonging solely to white men.[53] Here, the category of legal personhood emerges as a tool to create "legal borders of belonging," distinguishing between those who "[bear legal] rights and duty" – and belong – and those who do not.[54] In the case of *Osborne v. Morgan*, this legal border is institutionalized by the Supreme Court decision, which renders legal personhood "a product of [a] legal institution."[55] Consequently, the image of the "self-made" worker feeds into legal narratives of exclusion and marginalization. It perpetuates the image of 'the' white man as someone who holds legal rights and legal personhood and excludes those who are not in fact white, male, and "self-made" workers.

In this context it is important to note that the history of legal personhood as a narrative of exclusion goes back to Roman law. In Roman law, *persona* was used to distinguish between "holders of civil rights" and "those who lacked such civil personhood: women, children, slaves, and foreigners."[56] Returning to legal borders of belonging, legal rule now unfolds as a narrative of able-bodied privilege and disability passing. For instance, a deaf individual who was oral and could communicate through spoken language was considered to be a person with legal rights, a *persona*, whereas those who were unable to communicate orally were denied their rights.[57] This distinction turns legal personhood into a concept through which a specific norm is communicated,[58] the norm of able-bodiedness. This norm normalizes citizenship and reinforces the role that legal personhood plays in legal narratives of exclusion and discrimination.[59]

Taking this argument further, one can say that the fellow servant rule gained political significance not only in the context of industrialization and Native American history but also in the context of slavery. Under bailment law, slaves who had entered the industrialized workforce were perceived to be "rented property."[60] This mode of dehumanizing slaves and denying them legal personhood was subsequently supported by the *Scott v. Sandford* Supreme Court decision. In the decision, the Supreme Court ruled that "no black had been or could be a citizen of the United States, and therefore no black could bring suit in a federal court."[61] This brings back the ableist and racist politics of US Supreme Court decisions, as Dea H. Boster observes: "Southern courts […] explicated that no one could presume [that] African American slaves would have the intelligence or capability for self-governance to make their own decision."[62] Now keeping in mind that from the eighteenth century onwards so-called scientific racism sought to legitimize racial inferiority on the basis of physical characteristics such a skull shape and size,[63] bailment law and *Scott v. Sandford* evolve as part of a legal narrative of exclusion that is deeply racist at its core, not only because it posits a slave as a non-citizen and thus excludes African Americans from the legal imagination. Much more so, this particular legal narratives gives legislative form to what Rosemarie Garland-Thompson calls the "biologiz[ing] [of] cultural difference."[64] Applying Garland-Thompson's argument to the category of legal personhood as part of a legal narrative of exclusion, the binary between Western white and African American bodies is strongly reinforced through the category of legal personhood as a narrative of social exclusion and marginalization. In racializing slaves as being disabled, bailment law gave form to the intersection of ableism and racism, perpetuating not only the hurtful image of a slave being less than a human being but also the image of disability as fundamental and *non*-human difference.

The connection between biological determinism, racism, and legal narratives of exclusion then leads to another major historical and legal subtext that figures large in the construction of disability as otherness: eugenics. To understand how the eugenics movement others disability through laws passed in its favor, it is import to consider the ideological core of this paradigm. In *Inquiries into the Human Faculty,* British polymath Francis Galton coins eugenics as:

> The brief word to express the science of improving the stock, which is by no means confined to questions of judicious mating, but which, especially in the case

> of man [*sic*], takes cognizance of all the influences that tend in however remote a degree to give the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have had.[65]

While anything but brief, this quotation illustrates how the roots of eugenic thought run deeper and go beyond the medical model of disability, which understands disability as cognitive and physical impairment. By applying a politics of form perspective to Galton's rhetoric, terms like "improving," "judicious," "race," and "blood" play a key role in the polarization and politicization of ability and disability as opposing categories of human worth.[66] A tone reminiscent of the 'father knows best'-figure[67] suggests a sense of assurance and objectivity through the seemingly objective register of "the science of improving the stock" and "judicious mating" (of people, not cattle, even though the term might suggest otherwise). Consequently, further ideological ground is laid for the hegemonization of able-bodiedness. In a quotation that lacks the word human, it seems tautological to note that the rhetoric is dehumanizing. Yet this move is central to eugenic ideology: to introduce a power relation that plays off one category (the "more suitable races or traces of blood") against another (those "less suitable") in a polarization and nationalization of health and fitness.

To understand the "science" Galton refers to, it is also necessary to historicize this definition and to put it in the context of a wider network of ideologies, including social Darwinism and biological determinism. With Charles Darwin – Galton's cousin – publishing *On the Origin of the Species* in 1859, the idea of biological fitness was first introduced as "the outcome of a selective process."[68] However, it is not Darwinism that informs Galton's understanding of "science" and "fitness," but rather how the Darwinist idea of selection is interpreted in the wake of social tensions at the turn of the nineteenth to the twentieth century in the US. After the Civil War, a number of socioeconomic disruptions occurred. The processes of industrialization, urbanization, and immigration intersected, cities became overcrowded, and the industrial work force became more competitive, while wages sank below the national poverty line of $500 p.a. in 1880.[69] Moreover, unemployment and poverty were propelled by disruptions such as the "economic panic of 1893," which resulted in ever more socioeconomic hardship.[70]

As a consequence, the overall societal attitude towards socioeconomic disadvantage and disability became polarized. In the wake of social and economic disruptions, cognitively disabled people were perceived to be 'other' in a way that paved the

road for eugenic ideology. Cognitive impairment was understood to be a hereditary 'root cause' of poverty and crime, and a threat to the prevalent social order, which merged modes of othering disabled people with eugenic and biologically deterministic ideology.[71] Ironically, at the same time (after the Civil War), the manufacturing of artificial limbs turned into a thriving business,[72] which led to the commodification and iconization of physical disability. The following advertisement for leg prostheses is particularly interesting in this context as it links social exclusion back to issues of social class and gender:

Fig. 1: Advertisement for leg prostheses (1891)[73]

The image in Figure 1 features a young man wearing a removable below-knee prosthesis called "artificial legs." In this advertisement, physical disability is heavily classed, gendered, and ultimately normalized. By wearing what counted as "middle-class" attire at the end of the nineteenth century, the dark, smart jacket, bow tie, black trousers and white tights are key to the image of a young middle-class consumer whose socioeconomic, race, gender, and age privilege normalize his disability and render it societally accepted.[74]

On a second level, the visual rhetoric in this image plays into the construction and normalization of physical disability. A medium shot turns the man into the central element, which puts further visual emphasis on the prosthesis as a marker of able-bodiedness. This is reinforced by the fact that his leg stubs remain invisible. Instead of picturing mutilated or scarred flesh, the pair of clinically white tights suggest that this is a 'normal,' non-disabled body after all. Furthermore, the fact that the prosthesis is positioned at the center of the image distracts the gaze from the body of the man to the prosthesis itself and the technical detail with which it has been produced. The polished leather ankle boots and white leg sockets suggest that this is a hand-crafted product worth the money and the looks if one wants to pass as able-bodied and affluent as one can be. Consequently, the leg prosthesis in this image goes beyond the prosthesis as a mere "technical object" and "non-human agent."[75] In this image, the prosthesis is what makes the man human in the eyes of a capitalist and ableist ideology that turns physical disability into a commodity, while passing as able-bodied disabled turns into an implicit performance of privilege.

Returning to the visual rhetoric of this image, the scenic composition of the image also indirectly ties into the notion of class and socioeconomic privilege. Visual elements such as the fur rugs on the floor, the artificial tapestry, the curtains in the background as well as the fact that the man is seated on a wooden chair and faces the camera upfront all evoke the genre of the "bourgeois studio portrait," which presents a rather picturesque image of disability as commodified class privilege.[76] By placing visual emphasis on the fact that this young man looks just like any other man from the same social background, disability passing becomes political once more. In the image, being able to pass means to perform financial affluence and middle-class privilege, which sets the man in the advertisement apart from physically disabled factory workers, who were unable to afford prostheses of this kind.[77]

This point leads me to another legal narrative of social exclusion. It is no coincidence that in 1881, ten years before the advertisement was published, the 'American Ugly Law' was passed, which made it unlawful for physically disabled, disfigured, and other 'visibly' disabled people to appear in public.[78] Consequently, the 'Ugly Law' links the commodification of disability back to the marginalization of physically disabled and poor people. Those who could not afford expensive prostheses were considered to be "unsightly and disgusting objects" and "improper persons," while those who

could afford and were willing to wear prostheses were re-humanized as holders of civil rights.[79] Consequently, a legal discourse unfolds that, similar to Roman law's granting civil rights to deaf oral individuals, assigns legal personhood on the basis of how well a disabled person passes as able-bodied. The binary between disability and able-bodiedness as opposing categories of human worth is thus reinforced through the opposition of 'person' versus 'object' in a legal narrative in which socioeconomic disadvantage and the loss of human and civil rights accumulate under the label 'ugly.'

When looking at the othering of disability on the other hand, the politics of this discourse backfire. While images of affluent young men were published to commodify and normalize physical disability, social Darwinism offered the explanation that other disabilities, especially cognitive and intellectual impairment, cause poverty, alcoholism, and crime.[80] As a corollary, specific forms of impairment came to be associated with atavistic regression and degeneration, which racialized and animalized the disabled body that could not pass as able-bodied. To give two examples: Down's Syndrome was initially defined as 'Mongolism' in 1866, i.e. "the result of a biological reversion by Caucasians to the Mongol racial type."[81] In this definition, the "Mongol racial type" signified the difference that was thought to make "Mongolism" pathological and atavistic. This illustrates the close ideological ties between ableism and racism in the othering of disabled people.

Another example is the connection between ableism, biological determinism, and oralism. Following the emerging 'school' of oralism in the late nineteenth century, American Sign Language (ASL) was banned in schools in an attempt to force deaf individuals to communicate through oral speech, which oralists viewed as 'superior' to signing.[82] As oralism became prominent, capital-D Deaf individuals who used sign language as their native language were compared to "apes"[83] and this form of degrading and animalizing Deaf people led to the audist dismissal of sign language as "crude slang [l]inguists taught […] to apes and chimpanzees."[84] As a consequence, the intersection of racism, ableism, and biological determinism turned the relation between disability and able-bodiedness into a binary opposition between 'animal' and 'human.' Deafness and Deaf culture (which sign language is a part of) were animalized to the extent that the disabled, deaf, and signing body now embodied intrinsic, non-human otherness, and this difference in turn completed the ideological move social Darwinism makes from viewing disability as difference to disability as deficit.

Social exclusion, marginalization, and animalization resulted not only in the increasing institutionalization and segregation of cognitively disabled people in custodial asylums and so-called poor farms at the turn from the nineteenth to the twentieth century but also in the broadening of (cognitive) disability as a one-size-fits-all label for those who were seen as socially deviant.[85] On the basis of IQ tests that were inaccessible because of language and educational barriers,[86] cognitively disabled people, immigrants, and poor people who scored below a certain average[87] were given labels that stigmatized and criminalized them on more than one level. Terms such as "imbecile," "moron," and "idiot" reinforced the connection between being disabled and being devalued as a human being,[88] while able-bodiedness translated not only into "scores average on an IQ test," but also into "college educated," "middle class," and "white" – a bias US American eugenicists used as the basis to reinforce the supposed 'superiority' of the middle class.[89]

Going back to the image I discussed in Figure 1, it suffices to say that the connection between disability and social class presents itself as ever more ideologically loaded. The implicit image of 'the' able-bodied person as white, middle-class, highly educated, and male was reinforced through the systemic othering of those who did not confirm to this image, bodies that were everything but human under the gaze of social Darwinism and biological determinism. As a consequence, the "science" Galton refers to is to be taken with more than a grain of salt. Social Darwinism does not turn disability into a 'scientific' category, as it were. Instead, 'science' signifies a complex process of othering that turns disability into shorthand for 'deficit' and 'deviance,' while able-bodiedness once again becomes ideologically dominant through the white, Western, 'genetically sound,' all-American body.

The perceived threat of cognitively disabled people – and those perceived to be cognitively disabled – was not only influenced by eugenicists who used Social Darwinist rhetoric to legitimize the systemic and cruel criminalization and oppression of disability. On a more subtle level, eugenicists also employed photography to turn their label of cognitive disability as embodied social deviancy into a visual diagnosis. When looking at the photographs in eugenic textbooks, visual discourse is little but diagnostic. Instead, it turns into the gendered exhibition of cognitively disabled women:

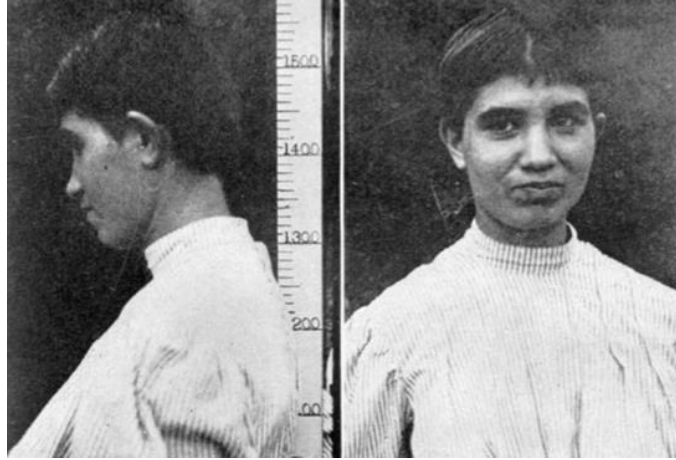

Fig. 2: "Case 324. Hattie, Age 23. Mentally 3." (1914)[90]

In the image depicted in Figure 2, the visual rhetoric employed by the photograph seems at first sight to match Galton's 'scientific' register. A cognitively disabled woman identified as "Case 324: Hattie, Age 23. Mentally 3" by the image's subtitle, is depicted in two shots, one a medium close-up shot of her face and her upper body, the other a medium close-up shot of her facial profile and her body next to a measuring device depicting her height (c. 1.55m).[91] The specific combination of these two shots –one of a facial profile, the other of a face facing the camera frontally – is known as a "mug shot" and frequently employed in prison photography.[92] It follows that the woman depicted in Figure 2 is already implicitly criminalized as 'socially deviant' even though there is no criminal record attached to the image. Instead, the image itself becomes the criminal record. The measuring device and the medical register of 'case 324' suggest that this is a clinical, visual diagnosis of a 'socially deviant,' and cognitively disabled woman, a woman who is, in the eyes of the implied (eugenic) viewer, not a women but rather a child with a disability. I am basing this observation on the woman's name as it appears in the subtitle, "Hattie," which sounds and looks like a nickname rather than her full name. While a nickname suggests intimacy between the viewer and the person who is photographed, the fact that a nickname was chosen for the woman in this particular image reveals the ableist ideology of this image. It objectifies and infantilizes her, making her regress back to the 'mental age' of a three year old, as the subtitle says. This mode of objectifying and gendering cognitive disability is chilling in comparison to Figure 1, in which physical – not cognitive – disability is normalized through a set of privileges that "Hattie" does not have.

What contributes further to this image becoming a visual diagnosis is the fact that the medium close-up shot of Hattie's face invites the spectator to study and measure her face in great detail. The measuring device depicts not only her height, but also the size of her ears, the distance from her ears to the back of her head as well as the distance from her ears to her chin (Figure 2). This suggests that the faces of cognitively disabled women are intrinsically different from their able-bodied sisters. Again, the seemingly 'scientific' visual register of this image is inherently political, as it reinforces the suggestion that skull size and form count as evidence for the connection biological determinism has made, between facial and physical characteristics and degeneration.

On a related note, it is important to consider that the eugenicist othering and gendering of cognitive disability was not only achieved through visual means. Legal narratives of exclusion played an equally important role in the othering of disabled women, especially those with cognitive disabilities and epilepsy. To respond to what eugenicists posited to be a "menace of the feebleminded",[93] eugenic involuntary-sterilization laws were passed, the first one in Indiana in 1907; thirty other states followed suit in 1931.[94] US American eugenicist Harry Laughlin was a key figure in this context as he was the first to develop a "Model Sterilization Law" that legalized involuntary sterilization of people with epilepsy, cognitive and intellectual impairment, and mental illness, on the basis that these were "inferior hereditary potentialities" that should not be passed on from one generation to the next.[95] The 1924 Supreme Court decision *Buck v. Bell* played an important role, as it supported and institutionalized Laughlin's "Model Law," making it a decision that is still quoted today in cases that involve issues of sterilization and reproductive rights.[96]

To understand the politics of *Buck v. Bell*, one needs to turn to biological determinism and atavism once more, this time in relation to gender and sexuality. As Philippa Levine observes, biological determinism and atavism are not only deeply racist and ableist but also sexist at their ideological core.[97] Both paradigms present women as 'inferior' because of presumed biological traits such as "smaller cranial capacity", which, as eugenicists argued, leads inevitably to the subsequent degeneration of society.[98] A publication that is key in this context is Cesare Lombroso's *The Female Offender*, published in 1895. In *The Female Offender*, Lombroso employs biological determinism and atavism to contrast "female sexual deviancy" in the form of "the female

criminal" with the "honest woman" as the gendered embodiment of female able-bodiedness.[99] In positioning himself as another father-knows-best figure, Lombroso constructs the "female criminal" and marks her as 'other' through a rhetoric that is, similar to Galton's, political in its polarization of normalcy versus deviancy. For Lombroso, height, weight, and hair color all serve as visual markers of "female criminality."[100] Characteristics such as "darker hair," "a higher weight" and "inferior cranial capacity" gender the racist and ableist connection biological determinism made between 'degenerate' biological traits and what was perceived as a hereditary predisposition to crime and criminality.[101] Moreover, similarly to the "clinical gaze" of eugenic photography, Lombroso exhibits the women he perceives and labels as 'deviant.' This is reinforced by detailed descriptions of what Lombroso coins "lesbianism." In Lombroso's eyes a pathology, not a sexual orientation, lesbianism is caused by "excessive lustfulness," which makes women "succumb [to 'lesbianism'] in a state of intoxication."[102] As a consequence, the "female criminal" becomes other in multiple ways. She crosses borders of appearance and sexual orientation that marginalize, stigmatize, and gender her difference. The subject position of being other, in turn, becomes instrumental in biological deterministic and atavistic ideology as it marks the conceptual turn from difference to deficit.

Furthermore, similar to eugenicists, Lombroso presents a highly problematic notion of intellect as an ideological benchmark. In contrasting an 'honest' woman's "intensity of feeling and maternal sentiment" with the female criminal's "deficiency of intellect," Lombroso employs the term "intellect" to further differentiate between the two types of femininity.[103] Returning to eugenic ideology and biological determinism, I would argue that by using "intellect" as another core concept in his ideology, Lombroso essentializes the image of 'the' honest woman versus 'the' female criminal and anticipates the ways in which eugenic ideology uses IQ test scores to systematically criminalize and discriminate against individuals that were perceived to be 'deviant.'

In *The Female Offender*, however, the idea of "intellect" is not based on IQ test scores. Instead, it turns into a moral of its own. Lombroso uses "intellect" to mark the transgression from 'the' honest woman to 'the' honest mother so that motherhood, in Lombroso's eyes, turns into a "moral prophylactic against crime and evil."[104] Keeping in mind that, in the wake of the first World War, eugenicists employed terms such as

'scientific motherhood' and 'mothers of the nation' to normalize and nationalize motherhood,[105] Lombroso's contrast between the 'honest woman' and the 'female criminal' now unfolds as the binary opposition between 'the' able-bodied, white, upper-middle class mother and the criminal, pauper, disabled mother, which reifies the power relation between disability and able-bodiedness.

It is precisely this distinction between disability and able-bodiedness that politicizes *Buck v. Bell.* In the case, Supreme Court Justice Oliver Wendell Holmes Jr. rules that Carrie Buck, mother to a six-month-old baby and resident at the "Virginia Colony for Epileptics and Feebleminded" should be sterilized against her will; he bases his opinion on the Virginia Sterilization Act, which was passed in 1924.[106] In the opening statement, Holmes identifies Buck as

> A feeble minded white woman who was committed to the State Colony above mentioned in due form. She is the daughter of a feeble minded mother in the same institution, and the mother of an illegitimate feeble minded child.[107]

This decision illustrates the gendering and criminalization of cognitive disability at the intersection of the politics of Supreme Court decisions, the politics of legal rhetoric, and the politics of cognitive disability. First of all, it is significant to me that Holmes does not refer to IQ tests or other diagnostic evaluations that might have been carried out to measure intellectual or cognitive impairment. Instead, Buck is diagnosed as feeble-minded because she is the daughter of a woman who is presented in court as a "pauper" and a "prostitute."[108] The link to eugenic ideology and biological determinism in this statement cannot go unseen. With Buck being identified as the daughter of a disabled mother, cognitive disability is again framed as a "hereditary potentiality," as Laughlin put it. This then leads back to *The Female Offender*: Buck is not only othered as cognitively disabled, but also criminalized for being the daughter of a prostitute, which eugenicists perceived to be a form of 'deviant' female sexuality and which fell under Laughlin's "Model Law" as a form of pathology that should be eradicated.[109]

The gendered criminalization of Buck as feeble-minded carries with it further consequences. Having an illegitimate child was – by the normative and gendered standards of 'scientific motherhood' in US eugenic ideology – not only considered to be trespassing in terms of how disabled women should behave (have no children), but also how white, upper-middle class women should behave (have children and be married).[110] As a corollary, there is a visual and even theatrical component to Holmes's rhetoric: The

opening statement puts Carrie Buck on the ideological spot, in a motion that is strikingly similar to the visual rhetoric of eugenic photography (see Figure 2). Buck is not only perceived as different because she is a women and has a child without having been married; she is also perceived as different because she is a woman, cognitively disabled, and a mother. Consequently, her disability, sexuality, and socioeconomic status are framed as the elements that make her woman- and motherhood pathological under the gaze of eugenic law.

What plays into this mode of othering is the fact that Buck was institutionalized at the "Virginia State Colony for Epileptics and Feeble-Minded."[111] As already mentioned, disabled people were increasingly institutionalized under eugenic rule for a variety of reasons and diagnoses, including not only neurological and psychiatric disabilities such as epilepsy and mental illness, but also labels that were given to women who were perceived to be sexually 'deviant,' such as "nymphomania."[112] Despite the variety of reasons, there is still a common denominator here: the majority of these women were poor.[113] As I have already argued, disability and poverty are closely and politically related, and in the context of institutionalization this relation evolves as heavily gendered once more. Eugenicists believed that poverty is what makes these women's disability "undesirable" and their femininity "socially inadequate."[114] Curiously enough, in *Buck v. Bell* Carrie Buck's socioeconomic status remains unmentioned. Her poverty is neither mentioned nor is it put in relation to her "feeble-mindedness."[115] Given the fact that Buck suffered from severe socioeconomic hardship both before and during her institutionalization,[116] I would argue that in the Supreme Court decision, poverty is naturalized as a signifier of disadvantage, which again supports biologically deterministic and eugenic ideology. Instead of making Buck's financial background explicit, it is assumed that she is poor because she is a disabled woman who lives in an institution and gave birth to an illegitimate child.

This power relation then leads to the criminalization of Carrie Buck as a disabled mother. In justifying forced sterilization, Holmes concludes that

> Many defective persons who if now discharged would become a menace but if incapable of procreating might be discharged with safety and become self-supporting with benefit to themselves and to society […]. It is better for all the world, if instead waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who manifest unfit from continuing their kind. […] Three generations of imbeciles are enough.[117]

In this statement, it is striking that Buck is now objectified as one of many "defective persons" whose "degenerate offspring" can and in fact should be held responsible for crime and criminality, which reinforces atavistic and biologically deterministic beliefs about the disabled body. What is important to note here is that there are two ideological layers to the othering of Buck. She is objectified as a "defective person" and, at the same time, re-gendered as a criminal woman, i.e. a danger to a purportedly white, able-bodied, and male society. Depicting Buck as a danger to society then carries further consequences for the politics of interpreting disability law and the politics of representation. By stereotyping Buck as a disabled female criminal, legal rule unfolds as a way to control deviant female sexuality through a law that is paternalistic in more than one sense. The fact that the decision was ruled on by a male judge and that the trial was held without Buck being present further reinforces the notion that this is a male majority ruling over a female minority, which marginalizes the female and disabled body once more.[118]

Returning to legal borders of belonging, I would argue that the politics of this Supreme Court decision are to be found in the marginalization and exclusion of the disabled and female body as a body that becomes illegal under eugenic law. With Buck sterilized against her will, without her consent and knowledge, her right to have control over her own body was denied – and so was her right to legal personhood. In the context of Lombroso's theories of female criminality that marked the female and disabled biological body as fundamentally inferior, Buck was denied ownership of her own biological and legal body. This excluded her not only from a society that perceived disabled women as a menace but also from a legal imagination that viewed her body as asexual, "celibate and childless," a form of eradicating and ultimately silencing disabled women under legal rule.[119]

Where does all of this leave disability as a category of historical and legal analysis? As it has been shown, the othering of disability at the turn from the nineteenth to the twentieth century is highly complex. A variety of hegemonic narratives comprised the core of disability as other. Nationalism and US exceptionalism, eugenics and Social Darwinism all interpreted disability as deficit, something that should be normalized, hidden, locked away, and eradicated. At the same time, able-bodiedness became ideologically dominant through a set of interconnected privileges, including race, gender, class, and legal power. Consequently, the politics of disability is not only about the

ways in which cognitive and physical impairment becomes visible and political in difference. Instead, it is about the ways in which the hegemony of able-bodiedness is given ideological form. In historical conceptualizations of disability, a legal imagination unfolded that pictured legal personhood as the body of a white, able-bodied, and male citizen, while disabled people haunted the legal imagination as extra-legal ghosts. (And the early French Deaf culture rummaged in the ideological attic in *Poltergeist*-fashion). In this context, the politics of disability ultimately proved itself to be a politics of form. By paying attention to the ways in which the power relation between disability and able-bodiedness was constructed through visual and legal rhetoric, the disgrace of silence in US history and law regarding disability as a category of historical and legal analysis is undone.

_Endnotes

1 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), 33–57, here: 52.

2 Dan Goodley, *Disability Studies: An Interdisciplinary Introduction* (London et al.: Sage, 2011), 174. By disability studies I am referring to “a broad area of theory, research and practice that [is] antagonistic to the popular view that disability equates with personal tragedy” (ibid., xi).

3 “Models of Disability,” *Michigan Disability Rights Coalition*, accessed 3 June, 2017, <http://www.copower.org/leadership/models-of-disability>.

4 “Health Topics: Disabilities,” *World Health Organization,* accessed 3 June, 2017, <http://www.who.int/topics/disabilities/en/>; “Disability Overview: Impairments, Activity Limitations, and Participation Restrictions,” CDC: Centers for Disease and Control and Prevention, accessed 3 June, 2017, <https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html>.

5 “Models of Disability” (cf. note 3), n. pag.

6 Baynton, “Disability and the Justification of Inequality in American History” (cf. note 1), 33–34.

7 Baynton, “Disability and the Justification of Inequality in American History” (cf. note 1), 37.

8 Goodley, *Disability Studies* (cf. note 2), 79.

9 Baynton, “Disability and the Justification of Inequality in American History” (cf. note 1), 52.

10 Anne Borsay, “Industrialization,” in *Encyclopedia of Disability*, ed. Gary L. Albrecht (Thousand Oaks, New Delhi, and London: Sage, 2006), 947–949, here: 948.

11 James Long, “Rural-Urban Migration and Socioeconomic Mobility in Victorian Britain,” in *The Journal of Economic History* 65.1 (2005),1–13; here: 2; Irmo Marini, *Psychosocial Aspects of Disability: Insider Perspectives and Counseling Strategies* (New York: Springer, 2012), 7.

12 Long, “Rural-Urban Migration and Socioeconomic Mobility in Victorian Britain” (cf. note 11), 7; Michael Oliver and Colin Barnes, *The New Politics of Disablement* (Houndsmills, Basingstoke: Macmillan, 2012), 60; Borsay, “industrialization” (cf. note 10), 948.

[13] Marini, *Psychosocial Aspects of Disability* (cf. note 11), 7; Walter Fandrey, *Krüppel, Idioten, Irre: Zur Sozialgeschichte behinderter Menschen in Deutschland* (Stuttgart: Silberburg Verlag, 1990), 90.

[14] Frederic Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (London and New York: Routledge, 2002 [1981]), 81.

[15] Oliver and Barnes, *New Politics of Disablement* (cf. note 12), 60.

[16] Brendan Gleeson, *Social Geographies of Disability* (London and New York: Routledge, 1999), 76. Cf. also Sunny Taylor, “The Right Not to Work: Power and Disability,” *Monthly Review: An Independent Socialist Magazine* 55.10 (2004), n. pag.

[17] I use scare quotes to indicate that feudal modes of production were not entirely free of asymmetrical power relations. Peasants, disabled or not, did not generally own the land that was part and parcel of the ‘natural economy.’ Instead, the land was owned by “a ruling caste of spiritual and temporal overlords” (cf. Gleeson, *Social Geographies of Disability* [cf. note 16], 76), which creates a power relation of those who own versus those who are dependent on landowners.

[18] Taylor, “The Right Not to Work” (cf. note 16), n. pag.

[19] In this essay, ‘Deaf’ shall be capitalized to signify Deaf culture, whereas lower-case ‘deaf’ stands for the medical diagnoses of hearing impairment and hearing loss.

[20] Lennard J. Davis, *Enforcing Normalcy: Disability, Deafness, and the Body* (London and New York: Verso), 89; Oliver Sacks, *Seeing Voices: A Journey into the World of the Deaf* (Berkeley and Los Angeles: University of California Press, 1989), 33.

[21] Sacks, *Seeing Voices* (cf. note 20), 33.

[22] By phonocentrism I mean the hegemonic “belief that sound and speech are superior to writing” and that “speech represents originary language, and anything else is secondary.” See M.J. Bienvenu, “Phonocentrism,” in *The SAGE Deaf Studies Encyclopedia,* eds. Genie Gertz and Patrick Boudreault. (Los Angeles: SAGE, 2016), 283. ‘Audism’ refers to a specific form of phonocentrism, the “notion that one is superior based on one’s ability to hear or behave in the manner of one who hears.” See H. Dirksen L. Bauman, “Audism,” in *Encyclopedia of Disability: A History in Primary Documents*, eds. Sharon S. Snyder and David T. Mitchell (Thousand Oaks, London, New Delhi: Sage), 141–143, here: 141.

[23] In the US Deaf community, the terms ‘sign-impaired’ and ‘ASL-impaired’ are commonly reserved for those who do not sign as opposed to the binary ‘hearing/hearing impaired’ that frames deafness as deficit (cf. Rachel Kolb, “Help for the Sign-Impaired,” The Opinion Pages: On the Ground. The New York Times, accessed 3 June, 2017, <https://kristof.blogs.nytimes.com/2015/06/03/help-for-the-signing-impaired/>.) Outside the medicalization of disability, ASL thus emerges not only as a language in its own right, but also as a testament to Deaf culture empowering those who use sign language as their main method of communication (ibid.).

[24] Davis, *Enforcing Normalcy* (cf. note 20), 86; Oliver and Barnes, *New Politics of Disablement* (cf. note 12), 60.

[25] Michel Foucault, *Discipline and Punish* (London: Allan Lane/Penguin), 304.

[26] Davis, *Enforcing Normalcy* (cf. note 20), 86.

[27] Ira Katznelson and Aristide Zolberg, *Working-Class Formation: Nineteenth Century Patterns in Western Europe and the United States* (Princeton, NJ: Princeton University Press, 1986), 206.

[28] Davis, *Enforcing Normalcy* (cf. note 20), 87; Fandrey, *Zur Sozialgeschichte behinderter Menschen in Deutschland* (cf. note 13), 90; Sharon L. Snyder and David T. Mitchell, “Rebecca Davis, From ‘Life in the Iron Mills’ (1861),” in *Encyclopedia of Disability: A History in Primary Documents:*

Volume 5, eds. Sharon L. Snyder and David T. Mitchell (Thousand Oaks, London, New Delhi: Sage), 259–260, here: 259.

[29] Borsay, "Industrialization" (cf. note 10), 948.

[30] Elliott Johnson, David Walker, and Daniel Gray, "Class," in *Historical Dictionary of Marxism: Second Edition* (Lanham et al.: Rowman & Littlefield, 2012), 79–82, here: 79.

[31] Sheila Riddell, "Socioeconomic Class," in *Encyclopedia of Disability: Volume 4*, ed. Jerome Bickenbach, David T. Mitchell, Walton O. Schalick III, and Sharon L Snyder (Thousand Oaks, London, New Delhi: Sage, 2006), 1473–1482, here: 1474.

[32] Jameson, *The Political Unconscious* (cf. note 14), 80.

[33] Rosemarie Garland-Thompson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997), 47.

[34] Garland-Thompson, *Extraordinary Bodies* (cf. note 33), 46.

[35] Lawrence Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), 2.

[36] Greta Olson, "Narration and Narrative in Legal Discourse," accessed March 5, 2017, <http://www.lhn.uni-hamburg.de/article/narration-and-narrative-legal-discourse>.

[37] Olson, "Narration and Narrative in Legal Discourse" (cf. note 36).

[38] Olson, "Narration and Narrative in Legal Discourse" (cf. note 36).

[39] Helle Porsdam, *Legally Speaking: Contemporary American Culture and the Law* (Amherst: University of Massachusetts Press, 1999), 17.

[40] Common law has a special place in the normalization and narrativization of legal rule. As Helle Porsdam argues, common law negotiates "basic legal rights and principles" (Porsdam, *Legally Speaking* [cf. note 39], 23) and gives them particular narrative and ideological form through social policies (ibid., 21). This view on common law further emphasizes the close connection between the making of the law and the marking of norms.

[41] "Osborne v. Morgan et al.," in *The American Law Register* 29.6 (1843), 399–403, here: 401.

[42] Garland-Thompson, *Extraordinary Bodies* (cf. note 33), 48.

[43] Dea H. Boster, *African American Slavery and Disability: Bodies, Property, and Power in the Antebellum South, 1800-1869* (Abington and New York: Routledge, 2013), 108.

[44] Chester E.W. Eckman, "Comment: The Creation of a Common Law Rule: The Fellow Servant Rule," in *The University of Pennsylvania Law Review* 132.579 (1984), 579–620, here: 581.

[45] Garland-Thompson, *Extraordinary Bodies* (cf. note 33), 48.

[46] Garland-Thompson, *Extraordinary Bodies* (cf. note 33), 48.

[47] Cf. e.g. Charles Mills, *Black Rights, White Wrongs: The Critique of Racial Liberalism* (New York: Oxford University Press, 2017).

[48] Greta Olson, "WS 2014/15, 11/17/14," Powerpoint Presentation in the Context of the Lecture Series "The United States: Beginnings – Law/Politics/Literature," JLU Gießen, November 17, 2014, Slides 1–33, here: 10.

[49] Olson, "WS 2014/15, 11/17/14" (cf. note 48), 11.

[50] Ter Ellingson, *The Myth of the Noble Savage* (Berkeley, Los Angeles, London: University of California Press, 2001), 345; Olson, "WS 2014/15" (cf. note 48), 24–25.

[51] Ellingson, *The Myth of the Noble Savage* (cf. note 50), 345; Olson, "WS 2014/15" (cf. note 48), 24–25.

[52] Mark Rapley, *The Social Construction of Intellectual Disability* (Cambridge: Cambridge University Print, 2004), 60.

[53] Barbara Young-Welke, "Law, Personhood, and Citizenship in the Long Nineteenth Century: The Borders of Belonging," in *The Cambridge History of Law in America Volume 2: The Long Nineteenth Century (1789-1920)*, eds. Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008), 345–386; here: 345; 347; 363.

[54] Andreea D. Boboc, "Theorizing Legal Personhood in Late Medieval England," in *Theorizing Legal Personhood in Late Medieval England*, ed. Andreea D. Boboc (Leiden and Boston: Brill, 2015), 1–28, here: 1.

[55] Yasco Horsman and Frans-Willem Korsten, "Introduction: Legal Bodies: Corpus/Persona/Communitas," in Law & Literature 28.3 (2016), 277–285, here: 277.

[56] Horsman and Korsten, "Introduction: Legal Bodies: Corpus/Persona/Communitas" (cf. note 55), 277.

[57] Paul T. Jaeger and Cynthia Ann Bowman, *Understanding Disability: Inclusion, Access, Diversity, and Civil Rights* (Westport, CT, and London: Praeger, 2005), 28; David L. Braddock and Susan L. Parish, "An Institutionalized History of Disability," in *Handbook of Disability Studies*, eds. Gary L. Albrecht, Katherine D. Seelman, and Michael Bury (Thousand Oaks, London, and New Delhi: Sage, 2001), 11–68, here: 16.

[58] Dave Fagundes, "What We Talk About When We Talk About Persons: The Language of a Legal Fiction," in *Harvard Law Review* 114.6 (2001), 1745–1768, here: 1745.

[59] The close connection between setting up legal borders of belonging and restricting legal personhood for the sake of a nationalist identity reverberates when looking at President Trump's "Muslim ban." By restricting the human "right to safe asylum" ("Protecting Refugees: Questions and Answers," UNHCR: The UN Refugee Agency, accessed 4 May, 2017, <http://www.unhcr.org/publications/brochures/3b779dfe2/protecting-refugees-questions-answers.html>.) Trump sets up legal borders of non-belonging to reinforce his sense of a hegemonic US nation as predominantly Western and white.

[60] Boster, *African American Slavery and Disability* (cf. note 43), 108.

[61] Colin Dayan, *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton, NJ: Princeton University Press, 2011), 134.

[62] Boster, *African American Slavery and Disability* (cf. note 43), 108.

[63] Ellingson, *The Myth of the Noble Savage* (cf. note 50), 151. This ideology was shaped by a number of publications in the eighteenth and nineteenth century in the field of "racist anthropology" (ibid.). To cite just a few, the work of Samuel Morton would be an example; Morton proposed that Native Americans are a distinct race because of their skull size (ibid.). Furthermore, George Gliddon argued that there are distinct "racial 'types' of blacks" (ibid.) while Louis Agassiz marginalized African Americans as belonging to "geographical-ecological provinces" (ibid.). Moving to the field of "criminal anthropology" (Hania Siebenpfeiffer, "Kriminelle Körper – Zeichen und Verbrechen bei Lavater, Lombroso, und Kafka," in *Bildregime des Recht*, eds. Jan-Baptiste Joly, Cornelia Vismann, and Thomas Weitin (Stuttgart: Merz & Solitude, 2007), 134), Cesare Lombroso presents as another prominent and inherently problematic figure in this context – I will return to Lombroso in the course of this essay.

[64] Garland-Thompson, *Extraordinary Bodies* (cf. note 33), n. pag.

[65] Francis Galton, *Inquiries Into the Human Faculty and Its Development* (London: Eugenics Society, 1951 [1883], 17.

[66] By "politics of form" I mean the impulse to politicize aesthetic form and to consider the position a text may take with regard to dominant ideologies (cf. Greta Olson and Sarah Copland, "Towards a Politics of Form," in *European Journal of English Studies* 20.3: 207–221, here: 207–208).

[67] Cf. Ann Gibson Winfield, *Eugenics and Education in America: Institutionalized Racism and the Implications of History, Ideology, and Memory* (New York: Peter Lang, 2007), 10. As eugenics was introduced in the fields of education and pedagogy at the beginning of the twentieth century, eugenicists such as John Franklin Bobbitt, G. Stanley Hall, and E.L. Thorndike came to be considered as the 'fathers of the curriculum.' This makes eugenics not only racist and ableist, but also sexist at its core as the hegemony of able-bodiedness and racism intersects with pre-existing patriarchal structures.

[68] Ruth Hubbard, "Abortion and Disability: Who Should and Should Not Inhabit the World?," in *The Disability Studies Reader*, ed. Lennard J. Davis (Abingdon and New York: Routledge, 2013), 74; Thomas C. Leonard, *Race, Eugenics & American Economics in the Progressive Era: Illiberal Reforms* (Princeton, NJ, and Oxford: Princeton University Press, 2016), 119.

[69] John Iceland, *Poverty in America: A Handbook* (Berkeley, Los Angeles, and London: University of California Press, 2013), 16; Zolberg and Katznelson, *Working-Class Formations* (cf. note 27), 206.

[70] Jonathan Rees, *Industrialization and the Transformation of American Life: A Brief Introduction* (Abingdon and New York: Routledge, 2013), 49.

[71] Braddock and Parish, "An Institutional History of Disability," in *Handbook of Disability Studies*, eds. Gary L. Albrecht, Katherine D. Seelman, and Michael Bury (Thousand Oaks, London, and New Delhi: Sage Publications, 2001), 38.

[72] Robert Bogdan, Martin Elks, and James A. Knoll, "Advertising Photographs: People with Disabilities Selling Things," in *Picturing Disability: Beggar, Freak, Citizen, and Other Photographic Rhetoric* (Syracuse, NY: Syracuse University Print, 2012) 99–114, here: 104–105.

[73] Bogdan, Elks, and Knoll, "Advertising Photographs" (cf. note 72), 105.

[74] Bogdan, Elks, and Knoll, "Advertising Photographs" (cf. note 72), 105.

[75] Eleana Vaja, "Prosthetic Concretization in a Parahuman Framework," in *Culture – Theory – Disability: Encounters Between Disability Studies and Cultural Theory,* eds. Anne Waldtschmidt, Hanjo Berressem, and Moritz Ingwersen (Bielefeld: transcript), 185–193, here: 187.

[76] Anne Maxwell, *Picture Imperfect: Photography and Eugenics 1870-1940* (Brighton and Portland: Sussex Academy Print, 2010), 50.

[77] Bogdan, Elks, and Knoll, "Advertising Photographs" (cf. note 72), 105.

[78] Susan M. Schweik, *The Ugly Laws: Disability in Public*, ed. Susan M. Schweik (New York: New York University Press, 2009), 1–2.

[79] Schweik, *The Ugly Laws* (cf. note 78), 1–2. It is important to note that the 'Ugly Law' was applied to 'invisible' disabilities as well, particularly those that were heavily stigmatized (such as epilepsy). Under the 'Ugly Law,' people with epilepsy who were unfortunate enough to have a seizure in public were considered to be "drunk and disorderly" and, in a deeply ableist attempt to spare the public 'the sight,' sent to jail or institutionalized. Cf. ibid., 106.

[80] Braddock and Parish, "An Institutional History of Disability" (cf. note 71), 38.

[81] Baynton, "Disability and the Justification of Inequality in American History" (cf. note 1), 19.

[82] Margret A Winzer, *The History of Special Education: From Isolation to Integration* (Washington, DC: Gallaudet University Press, 2002), 126.

[83] Braddock and Parish, "An Institutional History of Disability" (cf. note 71), 39.

[84] Joseph P. Shaphiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement* (New York: Three Rivers Press, 1994), 91.

[85] Braddock and Parish, "An Institutional History of Disability" (cf. note 71), 37; 39.

[86] Hubbard, "Abortion and Disability" (cf. note 68), 77.

[87] The ranking was based on numeral scores. A grade of 110-90 points equaled a 'normal' or, as it were, the score of a 'cognitively typical' person. Scores of 89-70 were seen to belong to 'high-grade morons,' a score of 69-50 equaled that of an 'idiot' and those labeled 'imbeciles' scored below 50. Cf. Garland E. Allen, "Biological Determinism," in *Encyclopedia of Disability: Volume 1*, eds. Jerome Bickenbach, David T. Mitchell, Walton O. Schalick III, and Sharon L. Snyder (Thousand Oaks, London, New Delhi: Sage), 172–174, here: 173.

[88] Cf. Allen, "Biological Determinism" (cf. note 87), 173.

[89] The ranking was based on numeral scores. A grade of 110-90 points equaled a "normal" person, a score of 89-70 a "high-grade moron," a score of 69-50 an "idiot" and those termed "imbeciles" scored below 50 (Allen, "Biological Determinism" [cf. note 87], 173).

[90] Martin Elks, "Clinical Photographs: 'Feeblemindedness' in Eugenics Texts," in *Picturing Disability: Beggar, Freak, Citizen, and Other Photographic Rhetoric*, eds. Robert Bogdan, Martin Elks, and James A. Knoll (Syracuse, NY: Syracuse University Print, 2012), 75–98, here: 80.

[91] Elks, "Clinical Photographs" (cf. note 90), 80.

[92] Maxwell, *Picture Imperfect* (cf. note 76), 48; Christian Mürner, *Medien- und Kulturgeschichte behinderter Menschen: Sensationslust und Selbstbestimmung* (Weinheim, Basel, Berlin: Beltz Verlag, 2003), 72–73.

[93] Steven A Gelb, "Darwin, Charles (1809-1882)," in *Encyclopedia of Disability: Volume 1*, eds. Jerome Bickenbach, David T. Mitchell, Walton O. Schalick III, and Sharon L. Snyder (Thousand Oaks, London, New Delhi: Sage Publications, 2006), 343–344, here: 344.

[94] Hubbard, "Abortion and Disability" (cf. note 68), 76.

[95] Paul A. Lombardo, *Three Generations, No Imbeciles: Eugenics, the Supreme Court, and Buck v. Bell* (Baltimore, ML: The John Hopkins University Press, 2008), 51. It is deeply ironic to me that Laughlin, who argued so vehemently for the sterilization and degradation of people with epilepsy, was epileptic himself – he kept his disability hidden from his colleagues until he was forced into early retirement (Lombardo, *Three Generations, No Imbeciles*, 213; George Watsky, "What Year Is It?", *How To Ruin Everything: Essays*, New York: Plume, 116). Returning to the close connection between ableism and racism, it is important to note that the US forced sterilization laws served as a model for eugenic sterilization laws in Nazi Germany, especially the "eugenic-sterilization law of 1933" as well as the "Nürnberg antimiscegenation or blood protection laws" (Cf. Hubbard, "Abortion and Disability" [cf. note 68], 79). Under these laws, individuals who were perceived as "racial damage" were sterilized against their will, including disabled people, so-called "racially mixed" individuals and Jewish people (ibid.).

[96] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), 276.

[97] Philippa Levine, "Anthropology, Colonialism, and Eugenics," in *The Oxford Handbook of Eugenics*, eds. Alison Bashford and Philippa Levine (Oxford: Oxford University Print, 2010), 43–62, here: 54.

[98] Levine, "Anthropology, Colonialism, and Eugenics" (cf. note 97), 54.

[99] Cesare Lombroso and William Ferrero, "The Female Offender," in *Encyclopedia of Disability: A History in Primary Documents: Volume 5,* eds. Sharon L. Snyder and David T. Mitchell (Thousand Oaks, London, and New Delhi: Sage, 2006 [1895], 302–304, here: 303.

[100] Lombroso and Ferrero, "The Female Offender" (cf. note 99), 303.

[101] Lombroso and Ferrero, "The Female Offender" (cf. note 99), 303.

[102] Lombroso and Ferrero, "The Female Offender" (cf. note 96), 304. Galton makes a similar observation, one that is no less disturbing, in *Inquiries into the Human Faculty*. He characterizes women with epilepsy as "creatures of extreme pity and extreme vice" who – by gender and disability – belong to "the criminal classes." He continues to describe grand mal seizures as "a mad outbreak" and "a sign of the 'devil'" (Galton, *Inquiries into the Human Faculty* [cf. note 65], 45). In other words: If you are a woman with epilepsy, you are the reincarnation of the devil who roams the earth with a sex drive and seizure activity that is through the roof.

[103] Lombroso and Ferrero, "The Female Offender" (cf. note 99), 303.

[104] Lombroso qtd. in Joseph W. Laythe, *Engendered Death: Pennsylvania Women Who Kill* (Bethlehem: Lehigh University Press, 2011), 44.

[105] Wendy Hayden, "From 'Mothers of the Nation' to 'Mothers of the Race': Nineteenth-Century Feminist and Eugenic Rhetoric," *Feminist Rhetorical Resilience*, eds. Elizabeth A. Flynn et al. (Logan, UT: State University Press, 2012), 186.

[106] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), x; Michelle Oberman, "Thirteen Ways of Looking at Buck v. Bell: Thoughts Occasioned by Paul Lombardo's Three Generations, No Imbeciles," in *Journal of Legal Education* 59.3, 357–392, here: 361; Hubbard, "Disability and Abortion" (cf. note 68), 76.

[107] *Buck v. Bell,* 274 U.S. 200 1927 [1924], 200.

[108] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), x.

[109] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), 51; 83.

[110] Hayden, "From 'Mothers of the Nation' to 'Mothers of the Race'" (cf. note 105), 183.

[111] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), 289.

[112] Braddock and Parish, "An Institutional History of Disability" (cf. note 71), 40.

[113] Braddock and Parish, "An Institutional History of Disability" (cf. note 71), 39.

[114] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), 39; 136.

[115] Cf. *Buck v. Bell,* 274 U.S. 200 1927 [1924].

[116] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), 120.

[117] *Buck v. Bell,* 274 U.S. 200 1927 [1924], 205–206; 207.

[118] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), 3. Buck was not informed about the outcome of the trial either. Instead, the salpingectomy she underwent was disguised as an appendectomy. Buck realized that she had been sterilized against her will when she was in her sixties (Lombardo, *Three Generations, No Imbeciles* (cf. note 95), 251.

[119] Lombardo, *Three Generations, No Imbeciles* (cf. note 95), x. Returning to the absence of disability in history, it pains me to see that feminist legal history remains largely silent on *Buck v. Bell*.* Does the history of disabled women not count? Or is feminist legal history still a question of whose story gets told? I leave this to the reader to decide.

*The exceptions are Kathryn Cullen-DuPont's entry on *Buck vs. Bell* in the *Encyclopedia of Women's History in America* and Oberman 2010. Oberman employs a feminist legal framework to analyze the politics of *Buck v. Bell*, however, her article is not a close reading of the case itself but a review of a book that was written about the case, Paul A. Lombardo's *Three Generations No Imbeciles: Eugenics, the Supreme Court, and* Buck v. Bell.